



Access Denied: The cost of the 'no recourse to public funds' policy

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By Agnes Woolley

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Glossary

BME	Black and Minority Ethnic - Terminology adopted by the Runnymede Trust and most public bodies to collectively refer to the UK's ethnic minority population.	GDPR	General Data Protection Regulation - regulation to give EU and EEA individuals control over their personal data.
CoC	Change of Conditions - Request for a change of conditions of leave granted on the basis of family or private life application.	ILR	Indefinite Leave to Remain.
DVR	Domestic Violence Rule - An immigration Rule which allows people who are living in the UK on a spouse or partner visa and are experiencing domestic violence to apply for ILR.	Immigration Rules	A collection of immigration laws which state who is allowed, and under what conditions, to enter and stay in the UK, and under what conditions.
DDVC	Destitute Domestic Violence Concession - Support provided to destitute people who have no access to money to pay for essential living costs and are applying for ILR under the DV rule. Successful DDVC applicants are granted 3 months temporary leave to remain with access to public funds.	LASPO	Legal Aid, Sentencing and Punishment of Offenders Act 2012.
DWP	Department for Work and Pensions	LLTR	Limited Leave to Remain - Permission to stay and work in the UK granted for a restricted time period. Those on the ten year route to settled status are eligible to apply for Indefinite Leave to Remain after four periods of thirty months' LLTR.
ECHR	European Convention on Human Rights	NRPF	No recourse to public funds - A condition imposed on some migrants, due to their immigration status, limiting their access to mainstream benefits such as Universal Credit and Housing Benefit.
Five-year route [to settlement]	A means to obtain settled status, whereby people who meet certain criteria can apply for two consecutive periods of two-and-a-half years' LLTR, after which they become eligible to apply for ILR.	Protected characteristics	Age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation. The Equality Act 2010 protects people against discrimination based on these nine characteristics.
FLR	Further Leave to Remain - a further period of LLTR.	PSED	Public Sector Equality Duty.
FOI Request	Freedom of Information Request.		

S17	Section 17 Support - Accommodation or financial subsistence provided to 'in need' children under section 17 of the Children Act 1989. A child is deemed in need if they are disabled, or cannot maintain or achieve an adequate standard of health or intellectual, emotional or social development.	UNCRC	United Nations Convention on the Rights of the Child
The Act	The Equality Act 2010.	Zero-hours contract	An employment contract between a worker and an employer with no fixed working hours; workers are not obliged to accept any number of hours offered and employers are not required to provide any minimum working hours.

Chapter 1.1 Introduction

This report examines the disproportionate effects of the ‘no recourse to public funds’ (NRPF) policy on women, low-income families, disabled people, pregnant (and maternity stage) women, and black and minority ethnic¹ (BME) British children. By drawing together experiences of destitution and statistical data this study finds these disproportionate impacts to amount to indirect discrimination in the case of those sharing ‘protected characteristics’.²

The impacts of the ‘no recourse to public funds’ (NRPF) policy are considered in light of the Home Office’s equalities duties as established by the Equality Act 2010³ - also referred to as the Act. The Act promotes equality and fairness in society; it provides the legal framework for safeguarding those with protected characteristics from unfair treatment and discrimination. **Equalities duties under the Act measure discrimination not by the number of people impacted by the implementation of a policy but by the significance of the impact on those with protected characteristics.**⁴

This report is focused specifically on one group of people with NRPF: migrants with Limited Leave to Remain (LLTR) on a ten-year route to settled status (see glossary) granted on human rights grounds, whether under the right to family or private life, outside of the immigration Rules, or on an exceptional basis. Whilst this group does have the right to live and work in the UK and are required to pay tax contributions, most people on the ten-year route to settlement - including disabled people and parents with dependent children - are not eligible for mainstream benefits because they are subject to the condition of ‘no recourse to public funds’.

The consequences of the NRPF condition, and the significance of these consequences, are measured by this report in the following ways:

1. Statistics on the demographic makeup of those who have sought to apply or have successfully applied to have the NRPF condition removed or not reimposed are set out to establish who is proportionately affected by the NRPF condition (Chapter 3). The NRPF condition is only removed on the grounds of destitution, child welfare or exceptional circumstances
2. Attention is given specifically to the groups of people who are over-represented in the statistical data and who share protected characteristics under the Equality Act 2010. The factors which cause each of these groups to be worse impacted by the condition are then explored (Chapter 4).
3. Experiences of destitution and child welfare are drawn upon to understand both the extent to which destitution prevents people from being able to meet their essential living needs, and how far the policy of NRPF affects the welfare of children in the immediate and long-term (Chapter 5).

¹ This report adopts the term BME to ensure consistency with other public bodies, however, we are aware of the limitations of this term particularly in relation to categorising many heterogeneous groups under a single label, for clarification, nearly all of the participants in this study are of black African or black Caribbean descent.

² The nine protected characteristics are defined in the Equality Act 2010, Part 2, Chapter 1, they include sex, age, disability and race, see <https://www.legislation.gov.uk/ukpga/2010/15/part/2>

³ Equality Act 2010, <https://www.legislation.gov.uk/ukpga/2010/15/section/19>

⁴ Equality and Human Rights Commission (2014), The Essential Guide to the Public Sector Equality Duty, https://www.equalityhumanrights.com/sites/default/files/psed_essential_guide_-_guidance_for_english_public_bodies.pdf

Some of the key issues found on the impacts of the NRPF policy include:

1. Women constitute an estimated 85% of those applying to have the NRPF condition removed (see Chapter 3). Nearly all of these women are single mothers. The NRPF condition indirectly discriminates against women on account of their sex because - amongst other factors - it restricts their access to full-time employment because of curtailments to free childcare entitlements.⁵
2. The NRPF condition prevents people with low-incomes from earning a living wage through employment because it excludes them from in-work benefits.
3. Disabled people, pregnant (and maternity stage) women and elderly people are often unable to work and simultaneously face higher outgoing costs, causing the negative impact of the NRPF condition to be greater.
4. 90% of the families involved in this study had at least one British child. British children whose parents are subject to NRPF receive less favourable treatment than their British peers who have British parents because of their parents' national origins. Examples of this unequal treatment include British children from NRPF families being restricted from benefiting from childcare, free school meals and social housing.
 - i. More than 95% of the British children in this study are BME children. The less favourable treatment faced by British children from NRPF families on the grounds of national origin is therefore linked to indirect discrimination on the grounds of race.
5. 74% of 66 people surveyed experienced at least one day when they were living with LLTR subject to NRPF where they could not afford to eat a hot and nutritious meal. 90% of these were women with children.
6. Nearly all of those surveyed (63/66) had experienced severely inadequate and overcrowded accommodation whilst living with LLTR subject to NRPF.
7. 6% of telephone respondents were single women who had experienced street homelessness with their children whilst living with LLTR subject NRPF.

⁵

This includes the childcare element of tax credits and free childcare for two-year-olds

These key issues indicate the significant and, in relation to those with protected characteristics, discriminatory consequences of the NRPF condition. It is found that the lack of Home Office data on these impacts points to a failure by the Home Office to monitor and evaluate the NRPF policy as a means to ensure the policy is focused, in line with the Act, around the implementation of equality.

The Home Office's failure to comply with the duties of the Act is further explored by this study through an analysis of the function of the Change of Conditions (CoC) application (Chapter 6). The CoC application is intended to provide a safeguard to mitigate or remove the adverse effects of the NRPF policy for people with protected characteristics. This study finds that the intended role of the CoC application is undermined by the multiple procedural barriers which prevent people from submitting a successful application, including onerous and often unobtainable evidence requirements.

The Unity Project and Deighton Pierce Glynn (DPG) have co-produced this report. The Unity Project is a charitable organisation based in Islington whose exclusive remit is to help destitute migrants who have LLTR subject to the NRPF condition to apply to have the condition removed. The Unity Project's volunteer case-workers are supervised by an OISC-regulated advisor from Lambeth Law Centre. Since its founding in May 2017, it has received referrals for over 300 individuals and families and has an 86% first application success rate, or 98% if counting successful challenges. The project is therefore well-placed to produce research on the effects of the NRPF policy and the CoC application process.

DPG is a law firm specialising in civil rights and judicial review litigation. Over the past few years its lawyers have represented dozens of individuals who have been affected by the NRPF condition, issuing over 20 successful judicial reviews of refused CoC applications. In March 2019, shortly before the hearing of a test case challenging the legality of the policy on discrimination law grounds, the Home Office agreed to conduct a Public Sector Equality Duty (PSED)-compliant review of the policy.

We believe this report's findings on the effects of the NRPF condition and our recommendations for policy change will play an important role in influencing this upcoming Home Office policy review. This report sheds light on the experiences faced by an often hid-

den group of people: destitute individuals and families living in precarious situations. There is a sector-wide drive for change in this policy area; 92% of 14 migrant support centres⁶ involved in this study agree that there is insufficient capacity to assist the numbers of people with LLTR subject to NRPF who need help with making a CoC application.

⁶ Also referred to by this study as 'referral organisations'

Chapter 1.2 - Methodology

A combination of the following methods were employed by this study to collect qualitative and quantitative data: literature reviews, online surveys, telephone surveys, demographic data requests, requests for case files and corresponding refusal decision letters, requests under the Freedom of Information (FOI) Act 2000, and data requests using Parliamentary Questions. An advisory group also provided guidance (see acknowledgements).

1.2.i Research Questions

Are certain groups, particularly those sharing protected characteristics, disproportionately impacted by the 'no recourse to public funds' (NRPF) policy?

Does the request for a change of conditions of leave granted on the basis of family or private life (CoC) application function effectively as a safeguard against destitution caused by, or unmitigated as a result of, the NRPF condition?

1.2.ii Literature Review

Relevant aspects of existing literature which have been drawn upon in this report include definitions of destitution, the provision of support provided under section 17 of the Children Act 1989 and the impact of the NRPF condition on families and children.

There is *no* existing research specifically into the CoC application as a safeguard against destitution.

1.2.iii Survey Data

Online Surveys

Two separate online surveys - referred to as 'online survey 1' and 'online survey 2' - were sent to external organisations (see Appendix 1 for complete set of questions). Online survey 1 was sent to organisations which refer people for help with making CoC applications. Online survey 2 was sent to organisations who directly assist with CoC applications.

The process of sample selection for each survey involved gathering email contacts from existing online contact database sources: The Refugee Council's destitution support service directory⁷ provided the contacts for online survey 1, and the Office of the Immigration Services Commissioner (OISC) non-fee charging Adviser Finder⁸ provided the contacts for online survey 2. Every organisation listed in these online directories was contacted initially so as to maximise the potential for geographical diversity and curb bias. This initial contact was established via email (see Appendix 2). A total of 75 organisations were included in the initial scoping stage for online survey 1, and 166 were included for online survey 2. A total of 15 contacts were removed from the combined lists after the initial scoping stage: ten of which because they failed to deliver to their recipients, five because their recipients were unwilling to partake in our research.

Both online surveys were sent by email in January 2019 with a thirty-day response deadline. For the sake of maximising our survey returns, the surveys were sent three times with three staggered reminders within the thirty-day timeframe. The surveys were distributed as links to a Google Form and were self-administered by practitioners.

Respondents to both online surveys were asked to complete all questions in reference to the twelve-month period between 1 January 2018 and 31 December 2018. Both surveys asked practitioners to specify whether figures they provided were exact or estimates. For both surveys, the majority of figures were estimates.

The data received was analysed manually. A process of data cleaning, whereby inaccurate or incomplete data was removed, was also carried out manually.

Both online surveys included a request for respondents to contribute datasets detailing the demographic information of all cases opened between 1 Jan 2018 - 31 December 2018 (see external demographic data below).

⁷ Refugee Council Destitution Support Service Directory, <https://www.refugeecouncil.org.uk/services/?page=8>

⁸ All organisations listed on the directory as OISC Level 1 accredited are, in theory, able to advise on the CoC application. See OISC Advice Finder, https://home.oisc.gov.uk/adviser_finder/finder.aspx

Online Survey 1

Online survey 1 was sent to 70 migrant support centres across the United Kingdom. In total 14 practitioners completed and returned the surveys. All 14 respondents worked with organisations based in England.

The survey consisted of eight closed multiple-choice questions which sought data on organisational capacities, the number of destitute people with NRPF seen, access to immigration advice, the numbers of referrals (for help with CoC application) made, and the rates of referrals accepted.

Fig 1 shows the services provided by organisations who returned survey 1

Type of service	How many surveys completed
Appointments	1
Drop-in	5
Combination of appointments and drop-in	2
Referral	5
Social support	1

Online Survey 2

Online survey 2 was sent to 156 OISC Level 1 registered organisations across the UK. In total twelve practitioners completed and returned the surveys. As with online survey 1, all practitioners worked with organisations based in England.

Online survey 2 consisted of eleven closed, multiple choice questions which sought data on organisational capacities, the number of CoC applications made and rates of success, the time taken to make a CoC application, the capacity to challenge refusals and access to legal advice.

Fig 2 shows the services provided by organisations who returned survey 2

Type of service	How many surveys completed
Appointment	5
Drop-in ⁹	1
Combination of appointments and drop-in	6

Telephone Survey

To generate both demographic data and data on the impact of living in destitution with NRPF, in-depth telephone surveys were conducted with 66 CoC applicants whom the Unity Project assisted between May 2017 and February 2019 (see Appendix 3 for complete set of questions).

The sample selection process for the telephone surveys involved examining the Unity Project's entire database and drawing out individuals who had made successful or unsuccessful applications. The total sample was 102. In order to comply with GDPR, individuals who had approached the Unity Project for help with a CoC application but subsequently decided not to submit a CoC application, or were not eligible to do so, were not included in this sample.¹⁰

The telephone surveys were conducted by volunteers who, for the most part, had also volunteered as caseworkers for the Unity Project. However, they conducted the surveys independently of the Unity Project and verbally established this with respondents before the survey began.¹¹ In order to ensure consistency in the process of data collection, all volunteers received a training session and an instruction pack that detailed how to conduct the surveys and record data. Volunteers recorded results online in a Google Form while they conducted their telephone surveys.

Calls were carried out on average once-a-week over the three months between January 2019 and March 2019. In an attempt to contact as many applicants as possible, volunteers called potential respondents a maximum of three times across three weeks.¹²

⁹ Drop-in centres are defined here as charities that give advice on issues such as immigration, homelessness and destitution. To access a drop-in centre visitors do not need to be referred. The majority of drop-in centres involved in this study were open at least one day a week, during the day time and most require visitors to arrive early in the morning

¹⁰ Common reasons why the Unity Project may not have continued to help someone submit a CoC application include ineligibility due to immigration status, eg. Zambra-no carers; the Unity Project losing contact with the potential applicant; and issues a potential applicant had accessing the Unity Project, usually due to geographical limitations.

¹¹ Volunteers informed survey respondents that taking part in the survey would have no impact on future involvement with the Unity Project, and that they (the volunteers) were unable to offer any advice.

¹² There were occasions where an applicant may have been called more than three times, if, for example, they requested to be called back on a separate occasion or if they were unreachable but had expressed an interest in taking part in the survey to a Unity Project supervisor or caseworker in person or via email.

No data was provided by 36 contacts, of which one did not wish to partake in the survey and the remaining 35 could not be reached.

Telephone interview questions were framed around four topics: 1) Destitution, 2) Accommodation, 3) Making the CoC application, and 4) Demographic information. All questions were asked in relation to the period in which respondents were living with LLTR subject to NRPF. The wording of the questions and the structure of responses followed the format and practice of established demography surveys such as the EU Survey on Income and Living Conditions questionnaire.¹³

Figs 3.i-vi show the demographics of telephone survey respondents

Fig 3.i:

Age	Number of Respondents
18-24	2
25-34	16
35-44	31
45-54	13
55-64	2
65+	0
Prefer not to say	2

Fig 3.ii:

Sex	Number of Respondents
Male	5
Female	60
Prefer not to say	1

Fig 3.iii:

Nationality	Number of Respondents
Bangladeshi	1
Ghanaian	26
Guinean	1
Jamaican	7
Nigerian	26
Pakistani	1
Saint Lucian	1
Sierra Leonean	1
Other	1
Prefer not to say	1

Fig 3.iv:

Ethnicity	Number of Respondents
Black African	54
Black Caribbean/West Indian	8
Asian - Pakistani	1
Asian - Bangladeshi	1
Mixed - Black African and white	1
Prefer not to say	1

Fig 3.v:

Dependants	Number of Respondents
Yes - Have children	66
No - No children	0

Fig 3.vi:

Disability (self-defined) in Family ¹⁴	Number of Respondents
Yes	20
No	45
Prefer not to say	1

1.2 iv Demographic Data Requests

External Organisations

Organisations participating in online survey 1 and online survey 2 that opened over ten cases between 1 January 2018 and 31 December 2018 were given the option to contribute further demographic data to this study. Anonymised data on the following categories was requested: age, ethnicity, nationality, gender and relationship status of applicants; number, age and nationality of dependants; mental health, disability or illness of applicants and dependants; pregnancy and maternity leave of applicants; evidence of domestic violence; employment statuses; borough and city; dates cases were opened.

Six organisations - three referral centres and three organisations making CoC applications - submitted this anonymous data. Four of these are based in London, one in Manchester and one in Essex. Data was submitted mostly via email in Excel format and was transferred to a Google Sheets database.

¹³ See Family Resources Survey, Question Instructions (2015-2016) https://circabc.europa.eu/sd/a/d47a0d25-55fe-4282-b328-e6d294f31d50/2015_Questionnaire_UK.pdf

¹⁴ This includes the applicant, their child and/or their partner.

The combined demographic datasets of contributing organisations constitute 141 cases.

The Unity Project

The Unity Project provided demographic data on the categories listed above. This data cover 135 cases which had been submitted or were being prepared to be submitted between September 2017 and April 2019. The sample is bigger than that of the telephone surveys because of the longer timeframe. This sample does not include applicants who decided not to go ahead with their applications or were not eligible to do so (see above).

This data was transferred onto a separate Google Sheets document and analysed distinctly from the data provided by external organisations in order to prevent any possible duplication of data with potential referral organisations.

It is estimated that the number of successful CoC applicants helped by the Unity Project could represent 10% of all CoC applicants granted recourse across the UK in a 12 month period. This is a rough estimate based on Home Office figures from 2014 which state that 844 people were granted recourse to public funds in a 12 month period¹⁵ and the Unity Project's statistics for 2018 which catalogue the submission of 85 successful applications in this period.¹⁶

1.2 vii Case Files and Decision Letters

Data was also collected by analysing the 16 refusal decision letters received from the Home Office in response to applications submitted by the Unity Project between September 2017 and April 2019. Of the 16 refused applications, 13 (81%) were since granted a successful decision; three were successfully re-submitted, and 10 (62%) were successfully challenged. One challenge is still pending.

1.2 viii Methodological Limitations

There is an overrepresentation of Greater London in the data used by this study. The Unity Project is a London-based project and all apart from two applicants the project has assisted have been from Greater London or neighbouring South East counties, including Surrey and Essex. The Unity Project's relationships with other London-based organisations may have led to such organisations being more inclined to participate in the online surveys, and to contribute demographic data to the study. Although this inclination increases the potential of bias, this study finds no significant indication of significant difference between partaking organisations and the data they provided, and those who chose not to participate. The geographical concentration of the data can also be attributed to the fact that there are more migrant support centres in London¹⁷ and a higher concentration of migrants living in London than elsewhere in the UK.¹⁸ Although the variable of location will impact the findings slightly - due to factors such as the cost of living and rate of pay - the conclusions drawn will likely apply, in varying degrees, across the UK.

The information gathered through telephone surveys rests on respondents' reports. This study did not verify the accuracy of self-reporting. However, data yielded through telephone surveys was cross-referenced with other data sources, mitigating potential inaccuracy. In addition, this report has no reason to doubt the personal reports of respondents, particularly considering the existing relationships between the Unity Project and all the telephone survey respondents. The figures provided in responses to the telephone surveys are also, in the majority of cases, estimates. All statistics referred to in this report are therefore given as a general guide.

¹⁵ Home Office, 2014, Policy Equality Statement (PES): No recourse to public funds, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/421397/NRPF9_PES.pdf

¹⁶ It is noted that there may have been a significant increase in the total number of people granted recourse from 2014-2018. However, the Home Office's 2014 figures provide the only available situating data with which to contextualise the sample size provided by the Unity Project.

¹⁷ Refugee Council's interactive map indicating the locations of regional migrant support centres shows a saturation of migrant support centres in London https://www.refugeecouncil.org.uk/how_can_we_help_you/i_need_destitution_support

¹⁸ Greater London Authority's latest figures estimate 72% of all undocumented migrant children in the UK live in London, giving rise to the proportionally high numbers of London-based migrant support centres, see the GLA Citizenship and Integration Initiative <https://www.london.gov.uk/decisions/dd2176-citizenship-and-integration-initiative>

Freedom of Information Requests

In order to situate this study's datasets, Freedom of Information Requests (FOIs) were submitted to the Home Office and the NRPF Network with the aim of establishing the total number of people assigned NRPF and the total number of CoC applications made in the last three years. Some of the resulting information received is drawn upon by this report. *Freedom of Information Requests to the Home Office*

FOIs were submitted to the Home Office concerning the number of people granted LLTR on the ten year

route to settlement who were assigned NRPF between 2016 and 2018, the proportion of these who were women, and the proportion who were women with dependants.

Further Home Office FOIs were submitted on the number of CoC applications processed through 2017 and 2018 that were submitted and granted in total, submitted by and granted to women, and submitted by and granted to women with dependants.

However, we came to suspect the Home Office's responses to our FOIs of inaccuracy and as such we could not use the majority of it. Potential inaccuracies to our FOIs are as follows:

1. *'The number of people granted LLTR with dependants that were assigned NRPF between 2015 and 2018':*

Home Office response:

- i. April 2015-April 2016: 860
 - ii. April 2016-April 2017: 980
 - iii. April 2017-April 2018: 2,100
- Total: 3,940

According to government-published Immigration Statistics, between April 2015 and April 2018 the number of people granted LLTR on the ten-year route to settlement on the basis of their family life as either a partner or parent of someone with settled status was 74,091.¹⁹ Further, the Home Office Policy Equality Statement (2015) reported that of those granted LLTR on the ten-year route to settlement, 92% were assigned NRPF.²⁰ Therefore, the Home Office's FOI response that they assigned the NRPF condition to only 3,940 people granted LLTR with dependants between 2015 and 2018 - equivalent to 5.3% of the total number granted LLTR on the basis of their family life during that period - was far lower than expected given other government data and therefore judged to be inaccurate.

2. *'The number of successful change of conditions applications submitted by women and women with dependants in 2017 and between September 2017 and September 2018':*

Home Office's response:

- i. In 2017:
 - 1. Women: 220 successful CoC applications out of 315 submissions
 - 2. Women with dependants: 50 out of 65
 - 3. Total number of successful applications: 345 out of 360
- ii. From September 2017 to September 2018:
 - 1. Women: Under 2 successful applications out of 15
 - 2. Women with dependants: None out of less than 2

These figures again are verifiably inaccurate. Between September 2017 and September 2018 the Unity Project alone assisted with 65 CoC applications where the applicant was a woman; 63 of these applicants had dependants and 61 of these applications were granted in this time period. The Home Office's response was not used for this report; it raises troubling questions about their data reporting methods.

¹⁹ Taken from 'Extensions of stay data tables immigration statistics year ending December 2018' from Immigration statistics, year ending December 2018. Available from: <https://www.gov.uk/government/statistics/immigration-statistics-year-ending-december-2018>

²⁰ Home Office Policy Equality Statement on NRPF. April 2015. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/421397/NRPF9_PES.pdf

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Chapter 2

'No Recourse to Public Funds' explained

2.1 What is 'no recourse to public funds'?

The term 'public funds' refers to a collection of specific welfare benefits which are set out in Section 115 of the Immigration and Asylum Act 1999²¹ and Paragraph 6 of the Immigration Rules.²² People who are 'subject to immigration control' - meaning they need a visa to enter and/or remain within the UK - are commonly restricted from accessing these public funds.²³ Many migrants in the UK are subject to the 'no recourse to public funds' (NRPF) condition and are therefore not entitled to receive most mainstream benefits, including, but not limited to, disability living allowance, housing benefit and child tax credits.²⁴ An exhaustive list of public funds can be found in Appendix 5. There is no legal Section 3 of the Immigration Act 1971 afford the power to impose conditions of grants of leave

Although people with LLTR and NRPF are still entitled to receive NHS care, this is only after paying a health surcharge of, at the time of writing, £400 per year of their visa.²⁵ Children with NRPF can attend full time primary, secondary and college education, but their immigration status can restrict them from accessing student loans for further education.²⁶ Several other state provisions such as the right to receive free school meals are tied to parents' access to benefits, which means that children in NRPF families - including British children - can be excluded from receiving them except on a discretionary basis. Children in NRPF families are usually not able to access free childcare provided by

the Government for two-year-olds and additional childcare hours provided for three to four-year-olds - even if they are living in poverty - because of their parents' NRPF status.²⁷

A person's immigration status and future immigration applications can be affected if they erroneously claim a public fund they are not entitled to.²⁸ In some cases it is a criminal offence.²⁹

2.1.i Section 17 of the Children Act 1989

Section 17 (s17) support is not a public fund. S17 of the Children Act 1989 places a duty on local authorities (LA) to provide support in the form of accommodation and subsistence payments when necessary to safeguard the welfare of a child in need.³⁰ A destitute child is considered a child in need. S17 also creates a duty to support the parents or primary carer of a child, where necessary. In their 2017/18 annual report the NRPF Network recorded that LAs spend at least £43.5 million supporting 2552 households under s17 for an average time of just under two-and-a-half years, with most cases resolved by people going on to be granted LLTR with recourse to public funds.³¹

This support is not funded by central government and most LAs cannot afford to fulfill the safeguarding duties legislated under s17. The Association of Directors of Children's Services' (ADCS) 2018 research report into safeguarding pressures identifies the growing group of families who have NRPF as one of the top pressures

²¹ Section 115, Immigration and Asylum Act 1999, <https://www.legislation.gov.uk/ukpga/1999/33/section/115>;

²² Paragraph 6 of the Immigration Rules Guidance (2016), <https://www.gov.uk/guidance/immigration-rules/immigration-rules-introduction>. For more information see NRPF network (2018), What are Public Funds <http://www.nrpfnetwork.org.uk/information/Pages/public-funds.aspx>

²³ Section 1, Immigration Act 1971, <https://www.legislation.gov.uk/ukpga/1971/77/section/1> for more information see: Yeo, C (2017), What is the no recourse to public funds condition? <https://www.freemovement.org.uk/what-is-the-no-recourse-to-public-funds-condition/>

²⁴ See, Public Funds (2014) <https://www.gov.uk/government/publications/public-funds--2/public-funds>

²⁵ The IHS can be waived but access to fee waivers is rarely granted. For more information on fee waivers see: Mohdin, A (2019), More than 70% of fee waiver requests by destitution are rejected <https://www.theguardian.com/uk-news/2019/apr/04/over-70-of-uk-immigration-fee-waiver-requests-by-destitute-are-rejected>

²⁶ Student Finance, <https://www.gov.uk/student-finance/who-qualifies>. For more information see, The Education (Student Fees, Awards and Support) (Amendment) Regulations 2016, http://www.legislation.gov.uk/uksi/2016/584/pdfs/uksi_20160584_en.pdf

²⁷ NRPF Network (2018), What are not public funds, <http://www.nrpfnetwork.org.uk/information/Pages/not-public-funds.aspx#childcare>

²⁸ Section 115 Immigration and Asylum Act 1999, <https://www.legislation.gov.uk/ukpga/1999/33/section/115>. For more information see: *Who has 'no recourse to public funds'*, NRPF Network: <http://www.nrpfnetwork.org.uk/information/Pages/who-has-NRPF.aspx>

²⁹ Section 24 Immigration and Asylum Act 1999, <https://www.legislation.gov.uk/ukpga/1971/77/section/24>

³⁰ Section 17 Children Act 1989 <https://www.google.com/search?q=section+17+children%27s+act+1989&oq=section+17+children&aqs=chrome.0.0j69i-57j0l4.3220j0j7&sourceid=chrome&ie=UTF-8>

³¹ NRPF Network Annual Report, Financial year 2017-2018 <http://www.nrpfnetwork.org.uk/Documents/NRPF-connect-annual-report-2017-18.pdf>

on children's services budgets.³² The cost of both providing s17 support and the time required by social workers to undertake assessments is not included as part of LA funding formula.³³ Oxford University's Centre on Migration, Policy and Society's (COMPAS) 2015 study identified a conflict between NRPF immigration policy and s17 safeguarding duties.³⁴

National charities such as Project 17 and The Children's Society have highlighted the prevalence of hostile gatekeeping methods used by some LA's to reduce families' access to support; The Children's Society found that 6 in 10 families with NRPF who applied to their LA for s17 support in 2015 were refused support.³⁵ Further to this, a study produced by Hackney Migrant Centre and Hackney Community Law Centre evidences that the housing and subsistence payments provided to s17 families are often unsuitable.³⁶

2.2 Who does not have NRPF?

Whilst some British nationals who have left the UK and lived abroad for a significant period of time may have to prove their entitlement to public funds in accordance with the Habitual Residence test, it is largely the case that people who have British citizenship, Indefinite Leave to Remain (ILR), permanent residence, refugee status, humanitarian protection or discretionary leave *will* have access to public funds.³⁷

The imposition of NRPF does not affect people who have a derivative right of residence in the UK. Currently, EU citizens living in the UK may also have to prove their entitlement to benefits by passing the Habitual Residence and Right to Reside tests, though they are not automatically subject to the NRPF condition.³⁸ The

government has proposed that, in the event of the UK leaving the EU, they will also be required to apply for leave to enter and remain under the Immigration Rules, and so will also become subject to the NRPF condition if applying under certain immigration categories.³⁹

The Domestic Violence Rule (DVR)⁴⁰ provides specific rights to people who have already been granted LLTR, on the basis of their spousal relationship with someone who is permanently settled in the UK, and who have experienced a relationship breakdown due to domestic violence. People protected by the DVR are eligible to apply for ILR; during this time, those who are destitute can apply for the Destitution Domestic Violence concession (DDVC). If they are successful, they are entitled to at least 3 months of temporary leave outside of the Immigration Rules and granted access to public funds whilst their DVR claim is being considered.⁴¹

2.3 Who has NRPF?

Most people who migrate to the UK are excluded from accessing public funds. People on student visas, work visas, asylum seekers, refused asylum seekers, overstayers, and those who have entered the UK without permission are all subject to NRPF.⁴² For those that have claimed asylum in the UK facing destitution, there is a separate system of asylum support provided by the government.⁴³

Since 2012, families or individuals granted LLTR under Article 8 of the European Convention on Human Rights (ECHR) on the basis of their right to family or private life, or outside of the Immigration Rules on an exceptional basis, generally have the NRPF condition applied to their leave.⁴⁴ For the most part, this comprises parents

³² The Association of Directors of Children's Services Ltd, Safeguarding Pressures Phase 6, 2018, Section 11.3.1 https://adcs.org.uk/assets/documentation/ADCS_SAFEGUARDING_PRESSURES_PHASE_6_FINAL.pdf

³³ *Ibid*

³⁴ Price, J. and Spencer, S. (2015), Safeguarding children from destitution: Local authority responses to families with 'no recourse to public funds', Oxford: COMPAS. https://www.compas.ox.ac.uk/wp-content/uploads/PR-2015-No_Recourse_Public_Funds_LAs.pdf

³⁵ Dexter, Z., Capron, L., and Gregg, L. (2016) *Making Life Impossible: How the needs of destitute migrant children are going unmet*. London: The Children's Society: <https://www.childrensociety.org.uk/sites/default/files/making-life-impossible.pdf>. Dickson, E (2019), *Not Seen, Not Heard: Children's experiences of the hostile environment*, <https://drive.google.com/file/d/1zsVpKqJ0hohTLJjV4KDPuQppwQnqneeN/view>.

³⁶ 74% of s17 properties assessed in their study were found to be physically unsuitable including having no access to cooking facilities or heating, see Threipland, C. (2015), *A Place to Call Home: A Report into the Standard of Housing Provided to Children in Need in London*. London: Hackney Community Law Centre and Hackney Migrant Centre: <https://www.hclc.org.uk/wp-content/uploads/2015/12/A-Place-To-Call-Home-Electronic-Report1.pdf>

³⁷ Price, J. and Spencer, S. (2015), Safeguarding children from destitution: Local authority responses to families with 'no recourse to public funds', Oxford: COMPAS. https://www.compas.ox.ac.uk/wp-content/uploads/PR-2015-No_Recourse_Public_Funds_LAs.pdf

³⁸ *Ibid*

³⁹ The UK's future skills-based immigration system (2018), <https://www.gov.uk/government/publications/the-uks-future-skills-based-immigration-system>

⁴⁰ Victims of Domestic Violence and abuse (2018) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/680977/vic-tims-of-domestic-violence-v14.pdf

⁴¹ Destitute domestic violence (DDV) concession (2018) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/679269/victims-of-domestic-violence-and-abuse-DDV-concession-v1_0.pdf

⁴² Price, J. and Spencer, S. (2015), Safeguarding children from destitution: Local authority responses to families with 'no recourse to public funds', Oxford: COMPAS. https://www.compas.ox.ac.uk/wp-content/uploads/PR-2015-No_Recourse_Public_Funds_LAs.pdf

⁴³ For more information on asylum support see: <https://www.gov.uk/asylum-support>

⁴⁴ Home Office Immigration Directorate Instruction (IDI) (2015), Family Migration: Appendix FM Section 1.0b; Family Life (as a Partner or Parent) and Private Life: Ten-year Routes: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/795223/10-year-routes-guidance-v4.0ext.pdf

of British children, or children who have lived in the UK for seven years or more who may be entitled to citizenship, partners of British or settled people, and people who have lived in the UK for over 20 years and may be entitled to permanent residence. Those granted LLTR on these grounds who cannot meet the requirements for the so called 'five-year route' to settlement, including meeting an income threshold, are granted LLTR on a 'ten-year route' to achieving settled status (see fig 4).⁴⁵ This means that people on the so-called 'ten-year-route' are granted LLTR for two-and-a-half years at a time and must apply for LLTR four times continuously before accumulating enough leave to become eligible to apply for ILR or 'settled status'. If there is a lapse in a person's grant of LLTR for any reason, they face their accrued leave becoming invalid and they will have to start again from the beginning of the route.

This report specifically concerns those who have LLTR subject to NRPF on the ten-year route. All those on this route are eligible to work and are required to pay tax in the UK, but they cannot access public benefits in spite of 'paying in' to the system. The ten-year route is used by the Home Office to disadvantage people for prior periods of overstaying.⁴⁶ On account of this, many people granted leave under this category will have been living in the UK without status for a number of years, often as a single parent, or may be applying as a spouse or partner but unable to meet the relevant financial requirements. Those on this route are therefore generally more likely to be financially insecure and in need of access to public funds.⁴⁷

There are multiple reasons why a person may become an overstayer, including a lack of legal aid, destitution, lack of awareness of their rights, Home Office administrative errors, being in an abusive relationship where a partner is controlling their immigration status, and changes to the Immigration Rules which can cut a person out of entitlement. Whilst this study does not specifically involve those who are undocumented and are subject to NRPF on account of not having LLTR, it ac-

knowledges the specific, often heightened, difficulties faced by those who - often for reasons beyond their control - are unable to regularise their status.⁴⁸

Immigration Fees

The recurrent immigration application fees and additional costs for legal assistance contribute to financial pressure faced by those on the ten-year route. An individual and any of their non-British dependants without permanent residence on a ten-year route to settlement must apply for 'further leave to remain' (FLR) four times to extend their leave within the ten year period (see fig 4). Fees for the further leave to remain application tend to increase annually; at the time of writing, the fee for one FLR application is £1,033, plus £1,000 Immigration Health Surcharge (IHS).⁴⁹ The fee for a child's application is the same as an adult's. Therefore for a family of three, every FLR application with an IHS currently costs £6,099, or £24,396 for four applications over ten years.⁵⁰ Fee waivers are technically available, but are in many cases inaccessible (for reasons that are beyond the scope of this report).⁵¹

The NRPF condition is automatically applied each time an applicant extends their leave, even if they had success in having the NRPF condition lifted previously. This includes disabled applicants, low-income families and single parents with young children, since individuals and even lawyers who make these applications are often unaware of the requirement to prove a need for recourse to public funds in the application for LLTR; whilst in other cases, the Home Office judges the evidence to be inadequate. (A legal representative could request a judicial review of a negative Home Office decision at this stage, though they would have to entertain particular diligence to do so).

The removal of legal aid for immigration cases means that migrants who are unable to make their immigration applications alone have no option but to either turn to private solicitors, many of whom charge extortionate fees, or attempt to complete complex immigration applications themselves.⁵²

⁴⁵ Home Office IDI (2018), Family Migration: Appendix FM Section 1.0a; Family Life (as a Partner or Parent): 5-Year Routes and exceptional circumstances for ten-year routes. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/766782/5yr-routes-guidance-v1.0ext.pdf

⁴⁶ Home Office (2012), Family Migration Policy Equality Statement, <https://www.gov.uk/government/publications/family-migration-impact-assessment>

⁴⁷ New family migration rules extend use of ten-year settlement route (2017), NRPF Network, <http://www.nrpfnetwork.org.uk/News/Pages/family-migration-rules.aspx>

⁴⁸ See footnote 40 for reasons why a person may have no immigration status.

⁴⁹ Home Office immigration and nationality fees: 29 March 2019 (2019), <https://www.gov.uk/government/publications/visa-regulations-revised-table/home-office-immigration-and-nationality-fees-29-march-2019>

⁵⁰ *Ibid*

⁵¹ Mohdin, A (2019), *More than 70% of fee waiver requests by destitute are rejected*: <https://www.theguardian.com/uk-news/2019/apr/04/over-70-of-uk-immigration-fee-waiver-requests-by-destitute-are-rejected>, also see Gbikpi, N (2019), *Fee Waiver Policy: Who Qualifies and What does the Home Office guidance say*, Free Movement: <https://www.freemovement.org.uk/fee-waiver-policy-who-qualifies-and-what-does-the-home-office-policy-say/>

⁵² Legal Aid Sentencing and Punishment of Offenders Act 2012, (LASPO), ch 10: <http://www.legislation.gov.uk/ukpga/2012/10/contents/enacted>. The Joint Committee on Human Rights' 2018 report raises substantial concerns about the human rights implementations of legal aid cuts, see <https://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/news-parliament-2017/enforcing-human-rights-report-published-17-19/>

Fig 4: ten-year route to settlement⁵³

Total Cost = £11,851

¹£2,033 (application free + IHS) x4 = £8,132

Legal research produced by the Project for the Registration of Children as British Citizens (PRCBC)⁵⁴ in 2014 concludes that the unaffordability of the British citizenship registration application fee, which is currently set at £1,012 per child, prevents children who are entitled to British citizenship from registering.⁵⁵ There is no fee exemption or waiver for registering children as British. Amnesty International's 2016 report *Cuts That Hurt: The Impact of Legal Aid Cuts in England on Access to Justice* highlighted the far-reaching implications of cuts to legal aid on children, claiming the consequences to amount to an unlawful disregard by the UK government of their obligation - under Article 3 (1) of the UNCRC - to ensure that all decisions which affect children are made primarily according to their best interests.⁵⁶ The combination of having NRPf and being from a low-income family prevents many children from accessing their rightful citizenship and the entitlements it holds, such as student loans and, in certain cases, child benefit.

Children in NRPf Families

Many children in NRPf families have British citizenship. There are a number of ways a child whose parent(s) are subject to NRPf may be able to apply for - or be automatically entitled to - British citizenship. Examples of these include, but are not limited to; a) a child being born in the UK to one British parent or one parent with ILR, b) a child being aged 10 or over, born in the UK and either of their parents becoming British citizens or gaining ILR before the child turns eighteen.⁵⁷

Public funds can only be claimed by adults, which means that children of NRPf parents, including British children, are de-facto excluded from access to most social welfare benefits. These include child-specific provisions such as child tax credits, child benefit⁵⁸ and free childcare.⁵⁹ Consequently, British children with parents who have LLTR with NRPf are excluded from many public funds. As explained by the Children Society's 2016 report *Making Life Impossible*, children who gain British citizenship often continue to be adversely affected by their parents' immigration status. This will be further explored throughout this study.⁶⁰

⁵³ These figures are accurate as of April 2019

⁵⁴ Ealing Law Centre and PRCBC (2014), *Systemic Obstacles to Children's Registration as British Citizens Legal Research Report*: <https://prcbc.files.wordpress.com/2015/08/systemic-obstacles-on-the-registration-of-children-as-british-citizens.pdf>

⁵⁵ Fees for citizenship applications and the right of abode from 6 April 2018, <https://www.gov.uk/government/publications/fees-for-citizenship-applications/fees-for-citizenship-applications-and-the-right-of-abode-from-6-april-2018>

⁵⁶ Amnesty International (2016), *Cuts that hurt: The Impact of Legal Aid Cuts in England on Access to Justice*, <https://www.amnesty.org/download/Documents/EUR4549362016ENGLISH.PDF> for more information on the affects of cuts to legal aid on children see Coram Children's legal centre (2018) Rights without remedies: Legal aid and access to justice for children: https://www.childrenslegalcentre.com/wp-content/uploads/2018/05/Rights-without-remedies_Final.pdf

⁵⁷ There are various other requirements a child may have to meet including these residency requirements, see Registration as British citizen: Children (Version 4.0) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/755505/Registration-as-a-British-citizen-children-v4.0ext.pdf

⁵⁸ Although child Benefit is listed in the Immigration Rules as a 'public fund' - exclusion to child Benefit does not apply to British or European children. However, many families are unaware of this exclusion and if a family contains British and none-British children, they can only claim child Benefit for their British child(ren). See: <https://www.gov.uk/hmrc-internal-manuals/child-benefit-technical-manual/cbtlm10140>

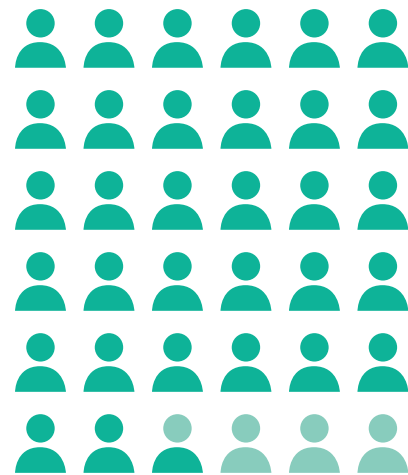
⁵⁹ Price, J. and Spencer, S. (2015) *Safeguarding children from destitution: Local authority responses to families with 'no recourse to public funds'*, Oxford: COMPAS. https://www.compas.ox.ac.uk/wp-content/uploads/PR-2015-No_Recourse_Public_Funds_LAs.pdf

⁶⁰ Dexter, Z., Capron, L., and Gregg, L. (2016) *Making Life Impossible: How the needs of destitute migrant children are going unmet*. London: The Children's Society. <https://www.childrensociety.org.uk/sites/default/files/making-life-impossible.pdf>

Fig 5: NRPF in numbers⁶¹



The number of people granted LLTR on the 10-year route in 2017



in 2015,

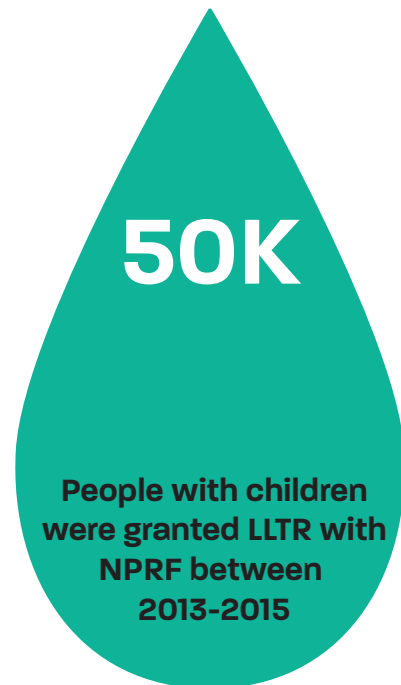
92%

of people granted LLTR were subject to NRPF



89.5%

of families involved in this study have at **least one** British child



⁶¹ 28, 342 from government immigration statistics, see 'Extensions data tables' for year ending December 2018 Expc 01 f Grants of an extension of stay by current category and previous category, excluding dependants family' <https://www.gov.uk/government/publications/immigration-statistics-year-ending-december-2018/list-of-tables>
 90% from Home Office 2015 NRPF Policy Equality Statement Home Office Policy Equality Statement (PES) No recourse to public funds, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/421397/NRPF9_PES.pdf

2.4 Removing the NRPF Condition

Home Office policy guidance states that if one of the following circumstances applies - and an applicant can sufficiently prove it so - Home Office decision-makers can use their discretion to vary the conditions of an applicant's leave and grant recourse to public funds:

1. 'The applicant is destitute; or
2. there are particularly compelling reasons relating to the welfare of a child on account of the child's parents very low income; or
3. the applicant has established exceptional circumstances in their case relating to their financial circumstances.'⁶²

In such cases, an applicant needs to evidence one or more of the above when they make their first application for LLTR or when they apply to extend their LLTR on a ten-year settlement route. If a person's situation has changed, or if they failed to submit evidence at the time that their LLTR was initially granted, they can apply to vary the conditions of their leave and remove the NRPF condition by making a change of conditions application (CoC).⁶³

Only those who are granted leave as a partner or parent on the grounds of private life, or outside the Immigration Rules on Article 8 grounds of the ECHR, are eligible to apply to have the NRPF condition lifted. This is set out in Appendix FM Section 1.0b of the Immigration Rules.⁶⁴

This research identifies that there are numerous procedural barriers preventing even eligible applicants from making a successful application to remove the NRPF condition. As explained in Chapter 6, these barriers render the process for removing the NRPF limited

in scope such that people with protected characteristics are exposed to the discriminatory impacts of NRPF and that they and their children face prolonged periods of destitution.

2.5 Underlying law and policy

The implementation of NRPF to LLTR visas granted on the grounds of Article 8 of the European Convention on Human Rights came about as a result of changes to the Immigration Rules in 2012.⁶⁵ However, the NRPF policy has not been legislated through parliament and is currently a policy governed only by Home Office policy documents. The statutory/legal basis for the policy rests on Section 3 of the Immigration Act 1971 which affords the Government the power to impose conditions on grants of leave to remain.⁶⁶

The justification for the existing NRPF policy primarily rests on the government's right to exercise immigration control and, in the government's view, to 'safeguard the economic wellbeing of the UK'.⁶⁷ The Home Office sets out in its NRPF Policy Guidance (2019) that the NRPF policy is designed to promote integration in society and encourage migrants to be financially independent, ensuring they are 'not a burden on taxpayers'.⁶⁸ The policy also forms part of the Home Office's strategy to meet their net migration targets.⁶⁹

Despite these legal underpinnings, the NRPF policy has been successfully challenged in the past. Following *Fakih v Secretary of State for the Home Department* in 2014 it was ruled that the NRPF policy was unlawful on a number of grounds.⁷⁰ The Upper Tribunal judge found that the Home Office had failed to recognise and discharge its public sector equality duties under the Equality Act 2010 (see Chapter 4).⁷¹ In response to this ruling the Home Office produced a Policy Equality Statement (PES) which assesses the effect the NRPF policy has on those with 'protect-

⁶² Home Office IDI (2015), Family Migration: Appendix FM Section 1.0b, section 13.2. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/795226/5yr-routes-guidance-v2.0ext.pdf

⁶³ Home Office Policy Equality Statement (PES), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/421397/NRPF9_PES.pdf

⁶⁴ Home Office IDI (2019), Family Migration: Appendix FM Section 1.0b; Family Life (as a Partner or Parent) and Private Life: Ten-Year Routes, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/773102/10-year-routes-guidance-v3.0ext.pdf

⁶⁵ Yeo, C, (2017), What is the no recourse to public funds condition?, Free Movement: <https://www.freemovement.org.uk/what-is-the-no-recourse-to-public-funds-condition/>

⁶⁶ Immigration Act 1971 <https://www.legislation.gov.uk/ukpga/1971/77/section/3>

⁶⁷ NRPF Policy Guidance (2019), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/766782/5yr-routes-guidance-v1.0ext.pdf

⁶⁸ *Ibid*

⁶⁹ The Supreme Court ruled that imposing a minimum income requirement for spouses (a similar strategy to the NRPF condition) was a legitimate strategy to meet the net migration target. For more information see: *MM (Lebanon) & Ors, R (on the applications of) v Secretary of State and another* [2017] UKSC 10 (22 February 2017) paragraph 82: <https://www.bailii.org/uk/cases/UKSC/2017/10.html>

⁷⁰ *Fakih, R v SSHD (JR), UKUT 513 (IAC)*, (2014), British and Irish Legal Information Institute: [http://www.bailii.org/uk/cases/UKUT/IAC/2014/\[2014\]_UKUT_513_iac.html](http://www.bailii.org/uk/cases/UKUT/IAC/2014/[2014]_UKUT_513_iac.html)

⁷¹ Equality Act (2010) <https://www.legislation.gov.uk/ukpga/2010/15/contents>

ed characteristics', who are legally considered to be vulnerable to discrimination.⁷²

The evidence presented by this study suggests that, despite the PES, the Home Office continues to fail to place equality at the heart of the implementation and delivery of NRPF policy. The impacts of the NRPF policy on those with protected characteristics evidence that issues of equality have been sidelined by the Home Office in favour of the prioritization of alternative concerns, indicating non-compliance with the Equality Act 2010.

The Home Office have, in response to a recent case brought by DPG on the grounds of discrimination, expressly agreed to conduct an Equality Impact Assessment (EIA) of the policy.⁷³

The legal underpinnings of the application to remove the NRPF condition rests on the Secretary of State's obligation under Article 3 of the Human Rights Act 1998 to safeguard people from destitution before a state of 'inhuman or degrading treatment' is reached.⁷⁴ This is because the prohibition under Article 3 on inhuman treatment is absolute. The experiences of destitution

faced by applicants prior to submitting a CoC application detailed in Chapter 5 of this report, and the barriers to submitting a successful CoC application explained in Chapter 6 call into question the effectiveness of the safeguard as a means of forestalling and anticipating destitution rather than reacting to it.

2.6 Context

The 2014 and 2016 Immigration Acts⁷⁵ implement measures aimed to create a 'hostile environment'⁷⁶ for those who do not have leave to remain, imposing measures such as diminishing rights of appeal, mandatory immigration checks and charges for migrants accessing healthcare, prohibiting banks from opening accounts for people without secure immigration status,⁷⁷ and fining employers who employ workers without status. These measures have had wide impacts that affect not only those without LLTR. These have been explored and challenged by organisations such as Joint Council for the Welfare of Immigrants (JCWI)⁷⁸ and Liberty.⁷⁹ The barriers to applying for LLTR - high fees, lack of legal aid, use of the ten-year route and extension of the NRPF condition - have become extensions of 'the 'hostile environment' policy aim.

⁷² Home Office Policy Equality Statement (PES) No recourse to public funds, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/421397/NRPF9_PES.pdf

⁷³ For more information on this case and the EIA see <https://dpglaw.co.uk/litigation-and-public-law-solicitors/news-feed/>

⁷⁴ Human Rights Act 1998, <https://www.legislation.gov.uk/ukpga/1998/42/schedule/1/part/1/chapter/2>

⁷⁵ Immigration Act 2014, <http://www.legislation.gov.uk/ukpga/2014/22/contents/enacted> and Immigration Act 2016, <http://www.legislation.gov.uk/ukpga/2016/19/contents/enacted/data.htm>

⁷⁶ As Home Secretary in the early 2010s, Theresa May stated that the government's 'aim is to create here in Britain a really hostile environment for illegal migration' see: <https://www.telegraph.co.uk/news/uknews/immigration/9291483/Theresa-May-interview-Were-going-to-give-illegal-migrants-a-really-hostile-reception.html>. The term 'hostile environment' has since been used to describe a set of administrative and legislative measures designed to make staying in the UK as difficult as possible for people without leave to remain.

⁷⁷ A Guide to the Hostile Environment: The border controls dividing our communities, Liberty (2018), <https://www.libertyhumanrights.org.uk/sites/default/files/HE%20web.pdf>

⁷⁸ On 01 March 2019, JCWI, with the support of others, successfully brought the case against the Home Office's Right to Rent scheme which required landlords to carry out immigration checks of tenants. The High Court ruled that the scheme, which was a key part of the hostile environment, could not be considered a proportionate means of preventing migrants without status from renting legally but that it caused direct racial discrimination on the housing market. R (JCWI) v SSHD [2019] EWHC 452, (2019), British and Irish Legal Information Institute: <https://www.bailii.org/ew/cases/EWHC/Admin/2019/452.pdf>

⁷⁹ Bradly, G (2018), *Care Don't Share*, <https://www.libertyhumanrights.org.uk/sites/default/files/Liberty%20%27Care%20Don%27t%20Share%27%20Report%20280119%20RGB.pdf>

Chapter 3

Who's affected: The statistics

The effects of the 'no recourse to public funds' (NRPF) policy are reflected by the demographics of people who have made, or are seeking to make, a change of conditions (CoC) application (or have not had the NRPF condition imposed or reimposed⁸⁰) on the grounds of destitution, child welfare or exceptional circumstances. This chapter sets out the statistical data gathered through this study and the pre-existing data provided by the Home Office to indicate which groups of people are overrepresented amongst those making, or looking to make, a CoC application. This statistical data will be used in the next Chapter to explore why the CoC has a disproportionate effect on those with protected characteristics.

Despite multiple Freedom of Information (FOI) requests submitted for this study (see Chapter 1), the Home Office has not provided reliable statistics on the demographics of people applying to change the conditions of their leave to be granted access to public funds. This means that the scale of disproportionality cannot be fully understood and this study is limited in its access to situating statistics. The lack of reliable Home Office data also suggests that the Home Office is not monitoring or recording the effects of the NRPF policy. The Equality and Human Rights Commission's guidance on the public sector equality duty (PSED) states that public bodies must consider if they have enough evidence of the impacts of a policy on people with 'protected characteristics' (see Chapter 4). In order for the Home Office to demonstrate that the NRPF policy gives due regard to the aims of the PSED up to date records should be kept and provided.⁸¹

The Home Office statistics listed below have been provided by their 2015 Policy Equality Statement.⁸²

3.1 Ethnicity

<i>External organisations</i> ⁸³	Black African - 78%
	Black Caribbean - 12%
<i>The Unity Project data</i> ⁸⁴	Black African - 77%
	Black Caribbean - 13%
<i>Home Office data</i> ⁸⁵ The Home Office does not publish data on race.	Africa - 41%
	Asia - 37%
	Americas - 12%

3.2 Sex

<i>External organisations</i>	Women - 95%
<i>The Unity Project data</i>	Women - 87%
<i>Home Office data</i>	Women - 73%

⁸⁰ The Home Office may use their discretion not to impose or reimpose the NRPF condition at the time of granting LLTR if an applicant can successfully prove they meet the criteria at this stage of visa application

⁸¹ Equality and Human Rights Commission (2014), The Essential Guide to the Public Sector Equality Duty, https://www.equalityhumanrights.com/sites/default/files/pсед_essential_guide_-_guidance_for_english_public_bodies.pdf

⁸² Home Office Policy Equality Statement (PES) No recourse to public funds, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/421397/NRPF9_PES.pdf

⁸³ Data from 'external organisations' refers to the combined demographic data sets of 141 cases opened between January and December 2018 contributed by six organisations. These cases cover a combination of potential CoC applicants and people who submitted CoC applications. See Chapter 1 for methodology.

⁸⁴ Data provided by the Unity Project relates to 135 cases opened between May 2017 and April 2019. It covers those who previously made a CoC application and those currently in the process of preparing an application. See Chapter 1.2 for methodology.

⁸⁵ Home Office Policy Equality Statement (PES) No recourse to public funds, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/421397/NRPF9_PES.pdf

3.3 Single Parents - Single mothers

<i>External organisations</i>	Single Parents - 84% of all parents were single parents. 100% of these were single mothers
<i>The Unity Project data</i>	Single parents - 76% of all parents were single parents. 97% of these were single mothers (74% of whole case set).
<i>Home Office data</i>	No data provided, although they note, 'Caseworkers say they see a significant number of female applicants ... who are single parents with one or more children.' ⁸⁶

3.4 People with dependants

<i>External organisations</i>	91% of all cases have dependants. The average number of dependants is 2 children.
<i>The Unity Project data</i>	96% of all cases have dependants. The average number of dependants is 2 children.
<i>Home Office data</i>	The Home Office records data on children who are the lead CoC applicant but does not record data on children who are dependants. Data recorded on under-18s shows the proportion of children who had the NRPF condition lifted or not imposed was 17%, the highest proportion of the age groups listed. ⁸⁷

⁸⁶ *Ibid*

⁸⁷ *Ibid*

3.4 i British Children

<i>External organisations</i>	Families with at least one British child - 94%
<i>The Unity Project data</i>	Families with at least one British child - 85%
<i>Home Office</i>	No data provided.

3.4 ii Black and minority ethnic (BME) British children

<i>External organisations</i>	Datasets on ethnicities and nationalities of children are incomplete but, because 90% of parents are recorded as black, either black African or black Caribbean (see above) it is assumed that nearly all of the British children affected by NRPF in this dataset will be black British children.
<i>The Unity Project data</i>	99% children were black or Asian, 84% of black families had at least one British child.
<i>Home Office</i>	No data provided.

3.5 Disabled people

<i>External Organisations</i>	Incomplete data sets.
<i>The Unity Project</i>	Disabled Adults ⁸⁸ - 30%
	Disabled children ⁸⁹ -11%, meaning that 19% of families had a disabled child
<i>The Home Office</i>	No data provided.
The Home Office notes; 'Data is not available on the number of disabled persons who may be affected by these proposals. However, we are considering how we might begin to capture this data in future'. ⁹⁰	

3.6 Pregnancy⁹¹

<i>External Organisations</i>	Incomplete datasets.
<i>The Unity Project</i>	5% (7/135)
<i>Home Office Data</i>	Not recorded

3.7 Age

<i>External Organisations</i>	Under-18 - 0%
	18-25 years - 2%
	26-35 years - 35%
	36-45 years - 44%
	46-55 years - 17%
	56-64 years - 1%
	65+ - 0%
<i>The Unity Project</i>	Under-18 - 0%
	18-25 years - 2%
	26-35 years - 28%
	36-45 years - 42%
	46-55 years - 25%
	56-64 years - 1%
	65+ - 1%
<i>Home Office</i> ⁹²	Under 18 - 8%
	18-25 years - 12%
	26-35 years - 43%
	36-45 years - 30%
	46-55 years - 6%
	56-64 years - 1%
	65+ - < 1%

⁸⁸ Diagnosed disabilities

⁸⁹ Diagnosed disabilities

⁹⁰ Home Office Policy Equality Statement (PES) No recourse to public funds, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/421397/NRPF9_PES.pdf

⁹¹ Maternity stage (up to 26 weeks after giving birth) is not recorded in any of the datasets used in Chapter 3

⁹² Percentage of the 833 people granted recourse to public funds in 2014



Chapter 4

Measuring inequality

This research sought to discover whether the ‘no recourse to public funds’ (NRPF) policy disproportionately impacts certain people, particularly those with protected characteristics. This chapter sets out definitions of discrimination and looks further into the statistics provided in Chapter 3 to examine why, and in what ways, the NRPF policy and its application has disproportionate effects on: women, and particularly single mothers; low income families; disabled people; pregnant women (and those who have recently given birth); and black and minority ethnic (BME) British children.⁹³ Although low-income families do not necessarily share a particular protected characteristic, the research question applied by this study was not restricted to understanding the effects of NRPF on those with protected characteristics and results show that low-income families are also adversely impacted by the NRPF condition. These findings show that the government has not given sufficient regard to its obligations under the Equality Act 2010 when designing and implementing the NRPF policy.

4.1 Defining Inequality

4.1 i Discrimination and Protected Characteristics

Equality Act 2010

The Equality Act 2010 is designed to protect people against discrimination. The Act established the public sector equality duty (PSED) which mandates that all public bodies, including the Home Office, give due regard to the need to:

‘(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.’⁹⁴

In order to meet the above principle aims of the PSED, public bodies are required to:

1. ‘remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
2. take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
3. encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.’⁹⁵

The Act protects people against discrimination based on nine ‘protected characteristics’:

1. age;
2. disability;
3. gender reassignment;
4. marriage and civil partnership;
5. pregnancy and maternity;
6. race;
7. religion or belief;
8. sex;
9. sexual orientation.⁹⁶

The consideration of various ways a policy might affect these different groups is an integral requirement of the Equality Act. Public bodies who do not consider the impact on these groups risk discrimination, wheth-

⁹³ Chapter 4 uses findings from telephone survey, online survey 1, and data and case files provided by the Unity Project

⁹⁴ Equality Act (2010): part 11, ch1, Public Sector Equality Duty, <https://www.legislation.gov.uk/ukpga/2010/15/part/11>

⁹⁵ *Ibid*

⁹⁶ *Ibid*

er direct or indirect, and contributing to an increased degree of social inequality (or at the very least a failure to combat it). The PSED measures discrimination not by the numbers of people with protected characteristics who are impacted but by the significance of the impact.⁹⁷

Although the NRPf policy is applied broadly, this study finds that the impacts of the NRPf policy faced by people on the grounds of the following characteristics: age, disability, pregnancy and maternity, race and sex amount to indirect discrimination.⁹⁸

4.iii Implementation of the Public Sector Equality Duty (PSED)

Guidance on public sector compliance with the PSED is provided by the Equality and Human Rights Commission's 2014 guide. This draws on the following principles, among others, for compliance with the Equality Act 2010, set out by case law:

General reference or regard to equality does not constitute compliance. Public bodies are required to rigorously, consciously and actively implement equality considerations, placing them at the heart of all policy. Giving due regard to the Equality Act does not constitute, for example, box ticking;

Issues of equality must be considered alongside other important circumstances. They must not be deprioritized in favor of alternative concerns;

Compliance with the equality duty must be carried out at the time a decision is made, or a particular policy is considered. Justifying a decision after it has been made, for example, is not recognised as compliance;

Public bodies are responsible for monitoring whether or not they are complying with the equality duty. Guidance states that in order for a public body to show that it has given due regard to the equality duty and the impact of its proposals on people with protected characteristics, records should be kept on the impacts and effects of a policy and the way its policy is carried out.⁹⁹

4.2 Who is disproportionately affected by NRPf and why?

4.2 i Women

Key Findings:

1. Women make up an estimated 85% of those either seeking to make or making a CoC application. Of this proportion, most are single mothers.
2. Single mothers are disproportionately affected because they can't access employment due to childcare restrictions.
3. Women with NRPf are more vulnerable to abuse and often cannot access domestic violence services because of their NRPf condition.

Female Unemployment - Access to childcare

Women constitute on average 85% of all those documented by this study, as determined by Home Office records, the Unity Project's data and data provided by external organisations.

84% of 141 cases documented by six external sources (see Chapter 1 for methodology) were single parents - 100% of these single parents were single mothers.

One-third of all applicants helped by the Unity Project were single mothers. 77% of the Unity Project's cases were single mothers with a primary school aged child under the age of 10. Just under half (47%) of all applicants were single mothers with children under 5 years old (preschool aged).

The Unity Project's datasample shows that parents who have preschool aged children are much less likely to be employed. 58% (37/64) of parents with preschool aged children were not in work. In contrast, only a third of those without preschool aged children were not in work.

⁹⁷ Equality and Human Rights Commission (2014), *The Essential Guide to the Public Sector Equality Duty*, https://www.equalityhumanrights.com/sites/default/files/psed_essential_guide_-_guidance_for_english_public_bodies.pdf

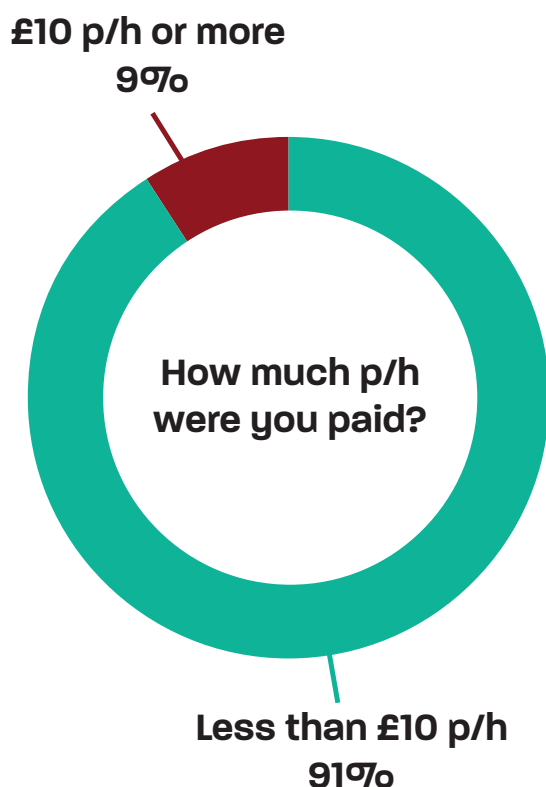
⁹⁸ Section 19 of the 2010 Act sets out that indirect discrimination occurs if a person is put at a distinct disadvantage when they have one or more protected characteristics. See: Equality Act 2010, ch 15, ch 2: Section 19, <https://www.legislation.gov.uk/ukpga/2010/15/section/19>

⁹⁹ Equality and Human Rights Commission (2014), *The Essential Guide to the Public Sector Equality Duty*, https://www.equalityhumanrights.com/sites/default/files/psed_essential_guide_-_guidance_for_english_public_bodies.pdf

Fig. 6 shows the average hourly wage of working NRPF parents who took part in the telephone survey (see Chapter 1.2 for methodology).

Fig 6:

35 responses



These results show that women make up the majority of unemployed people with NRPF. This correlation between women and unemployment amongst people with NRPF can be attributed to the fact that women are more likely to be single parents, as is evidenced both by this study and national statistics.¹⁰⁰ The reason why single mothers are less likely to work can be directly linked to the NRPF policy and the restriction it places on access to childcare. The NRPF condition puts women at a disproportionate disadvantage on account of their sex because mothers, particularly single mothers, are prevented from accessing affordable childcare and are therefore trapped into underemployment, low-paid work or unemployment.

Taking into account that 91% of parents in this study's telephone surveys (92% of whom were mothers) were paid less than £10.00 p/h it is almost always not cost effective for a single mothers - or single parents in general - to work when the cost of childcare is equal to the average hourly wage of less than £10.00.¹⁰¹

Most free early education childcare programmes for disadvantaged children funded by the government are inaccessible for preschool aged children whose parents have NRPF. NRPF families are not eligible to apply for the government-funded free childcare for under two-year-olds because it is linked to a parent's access to mainstream benefits.¹⁰² Entitlement to childcare for three to four-year-olds is limited to 15 hours per week for families with NRPF.¹⁰³ In contrast, the parents of three to four-year-olds who are in work and have access to public funds are eligible for double this amount of free childcare (30 hours p/w).¹⁰⁴ Those on low incomes may be forced to rely on informal sources of childcare, where carers are likely earning below the minimum wage, perpetuating issues of underpaid and informal employment. There are also clear safeguarding risks inherent in relying on childcare that is not provided by a registered and accountable provider.

Results from the May 2018 inquiry into the impact of early years on a child's life launched by the House of Commons Education Select Committee show that access to funded childcare support has a positive impact on a child's developmental progress.¹⁰⁵ The inquiry found that early years education facilitates the development of a child's cognitive, social and emotional, and speech and language skills and that children from disadvantaged families are more likely to have additional needs.¹⁰⁶ Eight children helped by the Unity Project suffered from diagnosed developmental delays or impairments, including issues relating to language development and motor skills. This does not include children who have diagnosed medical conditions such as autism, though it could be an indicator for future diagnosis. Although no empirical causal link can yet be drawn between excluding children from early years education and development issues, children with de-

¹⁰⁰ Office for National Statistics' most recent figures (2014) show women accounted for 91% of lone parents with dependent children, see Families and Households: 2014 <https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/families/bulletins/familiesandhouseholds/2015-01-28>

¹⁰¹ The Family and Childcare Trust found that for children under two years old the average hourly cost of a part-time Nursery childcare place in Inner London is £7.34 p/h <https://data.london.gov.uk/dataset/average-childcare-costs-in-london>

¹⁰² Free education and childcare for two-year-olds <https://www.gov.uk/help-with-childcare-costs/free-childcare-2-year-olds>

¹⁰³ 15 hours free childcare for three and four-year-olds <https://www.gov.uk/30-hours-free-childcare?step-by-step-nav=f517cd57-3c18-4bb9-aa8b-1b907e279bf9>

¹⁰⁴ 3/4 yrs 30 hrs and tax-free child care is only available to parents in work where one parent has recourse to public funds, this excludes single parents with LLTR under the condition of NRPF or to couples where both have LLTR with NRPF, see: <https://www.gov.uk/help-with-childcare-costs/free-childcare-and-education-for-2-to-4-year-olds>

¹⁰⁵ Education Select Committee life chances inquiry: EPI written and oral evidence, Education Policy Institute (2018) <https://epi.org.uk/publications-and-research/education-select-committee-life-chances-inquiry/>

¹⁰⁶ *Ibid*

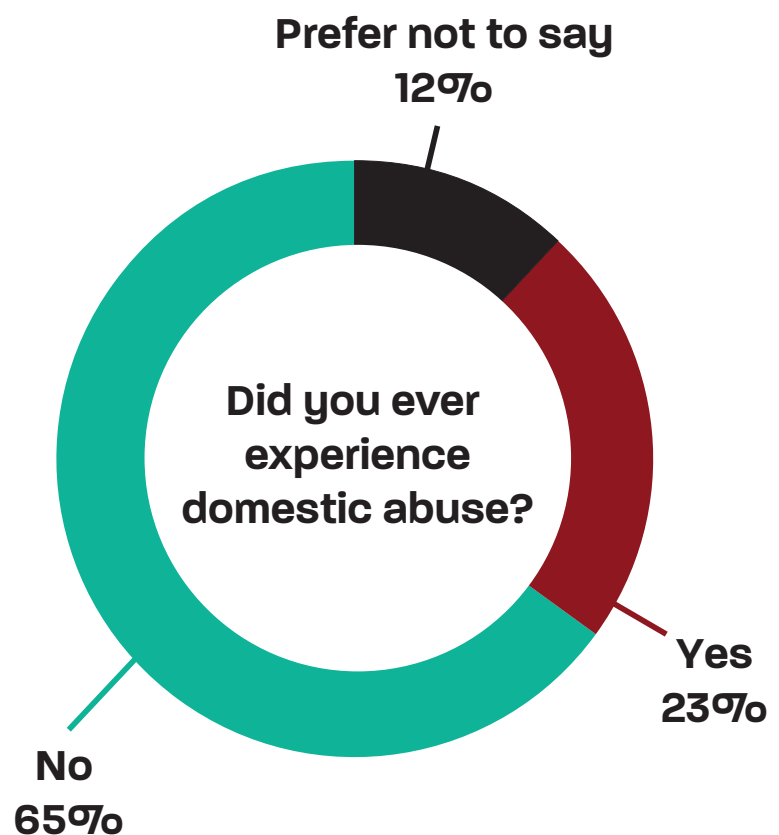
developmental issues need more support, and the NRPF condition hinders access to this.

The exclusion from state subsidised childcare associated with the NRPF condition has a contrary effect to that of its stated premise: rather than encouraging work and integration, it discriminatorily shuts single parents, most of whom are single mothers, out of the labour market and subsequently obstructs them from opportunities for integration afforded to those in employment.

Domestic abuse

66 responses

Fig 7:



Telephone survey results reflect the prevalence of domestic violence amongst female participants, with 15 respondents - all of whom are women with children - reporting having experienced sexual, physical, emotional or financial abuse. It is also noted that many telephone respondents may not have been comfortable, for obvious reasons, disclosing abuse to telephone interviewers. It is likely that actual rates of abuse may be higher, likely including some of the participants who responded to the 'prefer not to say' option.

The above findings on the gendered nature of unemployment indicate women with LLTR and NRPF are disproportionately likely to be financially dependent on partners, ex-partners, family members or friends - in part, due to their exclusion from state-subsidised childcare and employment. The context of financial dependency faced by women with NRPF can be seen as a contributing factor to the high levels of abuse and coercive and controlling behaviour¹⁰⁷ evidenced in fig 7. Ruby's story illustrates this (see Ruby's story).

¹⁰⁷

Controlling and coercive behavior in an intimate or family relationship is considered a criminal offence, see: Serious Crime Act 2015, <http://www.legislation.gov.uk/ukpga/2015/9/section/76/enacted>

Ruby's Story¹⁰⁸

¹⁰⁸ The names of those who are featured in this study have been changed to maintain confidentiality but all cases are genuine.

Ruby was four months pregnant when she came to the Unity Project to make a change of conditions application. Because of her advanced age, Ruby's pregnancy was deemed high-risk and medical professionals advised her to stop working, which she did. Ruby therefore became completely financially dependent on her partner, the father of her two children - including her unborn child. Ruby's partner has ILR in the UK and full access to public funds.

Ruby's partner exercises financial control over Ruby. He pays the rent and provides some food but he refuses Ruby any further financial support. Ruby has no idea how much money he receives or what their household costs are because he will not let her see any of the agreements or bills, and he does not tell her what money he claims. Ruby can barely afford to feed herself or their young child, let alone cover her maternity costs and baby necessities. She is isolated with no other family or friends to turn to.

Ruby's partner had been physically violent towards her in the past, including one incident when he was taken into police custody for four days. However, the police could not bar him from the home they share because the accommodation was in his name. Without recourse to public funds Ruby has nowhere else to live and no way of supporting herself and her children. Ruby cannot apply for the DDVC concession because she is not on a partner visa.

Ruby still lives with her partner because she has nowhere else to go. She applied two and a half months ago for recourse to public funds, and she is due to give birth in a matter of weeks. The Home Office have not given her a decision on her application. The delay Ruby is facing is taking a toll on her mental health and wellbeing. Since submitting the application, her physical health has deteriorated, and she has been submitted to hospital on at least one occasion.

Both men and women can experience domestic abuse, but domestic violence is a gendered violence and women are overwhelmingly more likely to suffer from it.¹⁰⁹ Reflecting this reality, our study adds that domestic violence is more prevalent for destitute NRPF women than for women in the UK in general. Whereas the Office for National Statistics estimate that 7.5% of British women experienced domestic abuse in 2017,¹¹⁰ our data suggest that 23% of destitute women with NRPF experience domestic violence.

This finding extends Southall Black Sisters (SBS)¹¹¹ and Women's Aid's extensive research into how all migrant women themselves are considerably more likely to experience sustained and repeated forms of abuse at the

hands of multiple perpetrators.¹¹² Their studies provide evidence that migrant women are at an increased risk of domestic violence, sexual violence, suicide, sexual and economic exploitation, domestic abuse-related homicide and harmful cultural practices.

Despite the increased risk of abuse that migrant women face, and the intensification of this by the dependency issues that NRPF can induce, women subject to NRPF who experience domestic violence have severely limited access to support. Women that stay in domestic violence services and refuge centres usually have to pay rent, which is often funded through public funds, such as housing benefit. Therefore, it is rare that such services can assist victims of domestic violence who

¹⁰⁹ The British Crime Survey shows that in 2010, 68% of domestic violence was committed by men, see Home Office Crime Research Statistics: <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/crimeresearch/nature-violent-crime>. For more information see: Myhill, A. (2017) *Measuring domestic violence: context is everything*, *Journal of Gender-Based Violence*, vol 1, no 1, pp 33–44; and, Walby, S. and Towers, J. (May 2017) *Measuring violence to end violence: mainstreaming gender*, *Journal of Gender-Based Violence*, vol. 1

¹¹⁰ Office for National Statistics, *Domestic abuse in England and Wales: year ending March 2017* <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/bulletins/domesticabuseinenglandandwales/yearendingmarch2017>

¹¹¹ Southall Black Sisters (SBS) is an organisation of BME women for BME women, they have worked for forty years against gender-related violence, specifically focusing on the issues faced by BME women. They highlight the role the NRPF condition plays in pushing migrant women into destitution, which often leads to forms of violence.

¹¹² Southall Black Sisters, *Protection for all: The Domestic Abuse Bill and Migrant Women*, (2019), <https://southallblacksisters.org.uk/news/protection-for-all-domestic-abuse-bill-and-migrant-women/>; and, Smith, K, Miles, C (2017), *Nowhere to Turn: Findings from the first year of the No Women Turned Away Project*, *Women's Aid: Until women & Children are safe*, <https://www.womensaid.org.uk/research-and-publications/nowomanturnedaway/>, also see Anitha, S. (2010) No Recourse, No Support: State Policy and Practice Towards South Asian Women Facing Domestic Violence in the UK, *British Journal of Social Work*, Vol. 40, Issue 2, pp. 462–479, 2010. Available at SSRN: <https://ssrn.com/abstract=1569238> also see Amnesty UK, 'No Recourse' No Safety: The Government's failure to protect women from violence, March 2008: available at http://www.amnesty.org.uk/uploads/documents/doc_18308.pdf

have NRPF, unless they receive funding to cover this cost through other means.¹¹³ Women's Aid's Nowhere to Turn Project (2017) found that on average there is just one refuge space available to women with NRPF per region of England.¹¹⁴

While the Destitution Domestic Violence Concession (DDVC) (see glossary for information on the DV Rule and the DDVC) is available to provide temporary access to public funds for those who are destitute and on spousal/partner visas with NRPF, those with NRPF facing abuse and destitution without a spousal/partner visa are not eligible to apply for the DDVC. Therefore, there is still a significant proportion of migrant women with NRPF who still cannot access state protection against domestic violence.¹¹⁵

The DDVC has also been criticised for its ineffectiveness, for reasons such as lack of availability of lawyers covered by legal aid, the short period of time available for applicants to evidence domestic violence, and the frequent refusal by the Department for Work and Pensions (DWP) of benefits applications made by women eligible under the rule.¹¹⁶

SBS's briefing paper *Protection For All: Domestic Abuse Bill and Migrant Women* (2019), which calls for a series of amendments to the government's 2019 Domestic Abuse Bill, evidences that migrant women with NRPF who are facing abuse, many of whom have children, are also often unable to work because they are traumatised and injured, and are isolated without support networks.¹¹⁷

Relationship Breakdown

Mothers with NRPF are almost always likely to be worse impacted financially by a relationship breakdown than the father. That nearly three-quarters of all applicants helped by the Unity Project were single mothers indicates that, where there are children, women with NRPF are more likely to take on the role of primary and sole carer. If a woman had been a stay-at-home mother prior to this, she may lack the experience and skills

- including a grasp of the English language - to find employment quickly and, as this study has explored, will also face problems accessing affordable childcare to enable them to work.

4.2 ii Low Income Families

Key Findings:

1. The NRPF condition has a negative impact on low-income-working families because it prevents them from accessing in-work benefits and traps them in in-work poverty.

Two-thirds of 136 applicants assisted by the Unity Project who were eligible to work were in employment at the time of submitting a CoC application.¹¹⁸

The majority of the working applicants assisted by the Unity Project were on zero-hour contracts, primarily working in industries which are poorly paid, such as cleaning and care work.

Data yielded through telephone surveys evidences that nine in ten applicants who are employed are paid less than £10.00p/h (see fig 6).

The NRPF policy is designed to 'prevent burdens on the taxpayer and promote integration'.¹¹⁹ Accordingly, the 2019 NRPF policy guidance reiterates the expectation that those who are granted LLTR and the right to work should support themselves through employment, and not through reliance on public funds.¹²⁰ This study indicates that the majority of people who are destitute with NRPF are employed and trying to support themselves through work but that they are often in low-paid and insecure jobs.

This trend of high levels of employment and destitution demonstrates that working people with NRPF are falling into destitution because they cannot access

¹¹³ Rights of Women (2013). *Domestic violence, immigration law and no recourse to public funds* <https://rightsofwomen.org.uk/get-information/immigration-and-asylum-law/domestic-violence-immigration-law-recourse-public-funds/>

¹¹⁴ Smith, K, Miles, C (2017), *Nowhere to Turn: Findings from the first year of the No Women Turned Away Project, Women's Aid: Until women & Children are safe* <https://1q7dqy2unor827bqjls0c4m-wpengine.netdna-ssl.com/wp-content/uploads/2017/07/NWTA-Full-report.pdf>

¹¹⁵ Destitute Domestic Violence Concession Guidance (2018): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/679269/victims-of-domestic-violence-and-abuse-DDV-concession-v1_0.pdf for more information see Eaves & Southall Black Sisters (2013) *Destitution Domestic Violence Concession – Monitoring Research Report*: <http://i3.cmsfiles.com/eaves/2013/12/DDV-Concession-Scheme-Monitoring-Report-Final-f14013.pdf>

¹¹⁶ Southall Black Sisters, *Protection for all: The Domestic Abuse Bill and Migrant Women*, (2019), <https://southallblacksisters.org.uk/news/protection-for-all-domestic-abuse-bill-and-migrant-women/>

¹¹⁷ *Ibid*

¹¹⁸ Eligible applicants exclude applicants with disabilities and single parents with preschool aged (under 5) children.

¹¹⁹ NRPF policy guidance (2019), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/766782/5yr-routes-guidance-v1.0ext.pdf

¹²⁰ *Ibid*

in-work benefits such as housing benefit, council tax reduction, tax credits and universal credit (see Sarah's story). Such benefits are means-tested and provide an essential safety net for those on low incomes. The risk of in-work poverty amongst low-income NRPF families is exacerbated by the fact that individuals are in insecure employment; those on 'zero hour contracts' are not guaranteed a minimum number of hours and are not entitled to sick pay, or paid leave. These individuals are often offered shifts at very short notice. Further, low-income NRPF families face proportionally higher accommodation costs because they are locked out of social housing (explored further below). The high rates of employment and in-work poverty amongst NRPF families with LLTR corroborates with previous research conducted by The Children's Society examining the impact of destitution on children.¹²¹

A review of the Unity Project's case-files evidences that, in many cases, the combination of low wages and exclusion from 'in-work' benefits has pushed low-income applicants towards informal work as a way to supplement their income and make ends meet - with the associated risks of exploitation and even criminalisation.¹²² In this way, excluding migrants from state welfare to reduce the burden on the public purse is in part self-defeating, as it perpetuates and facilitates the unregulated labour market, which does not contribute to the national economy as wages are not taxed. Moreover, the increased risk of violence against women,

specifically migrant women, within the informal economy is well documented.¹²³

The disadvantage faced by those with NRPF who are in low-income jobs is compounded by the fact that many will be taxpayers themselves, and will be carrying large individual economic burdens of debt as a direct result of the policy (see Leila's tax contributions).

It is found that the NRPF policy - with its stated aim to encourage people into work - fails to consider that the majority of those with LLTR on the ten-year route with the NRPF condition are in fact working but, as seen in Sarah's experience below, are falling into destitution because of the wider UK economic context (high-cost of living and stagnating wages)¹²⁴, which means that 'in-work' benefits are an essential safety net to prevent destitution for families on a low income.

Leila's Tax Contributions

Leila, a single mother of three young boys, had been continuously employed for four years as a support worker, providing residential care for elderly and disabled clients.

Despite having NRPF Leila paid, and continues to pay, tax in the UK. The tax Leila paid in one year is detailed below:

£4,500 Income Tax per year
£3,100 National Insurance
£1,500 Council Tax
= £9,100 tax per year

¹²¹ Dexter, Z., Capron, L., and Gregg, L. (2016) *Making Life Impossible: How the needs of destitute migrant children are going unmet*. London: The Children's Society: <https://www.childrenssociety.org.uk/sites/default/files/making-life-impossible.pdf>.

¹²² For information on the informal labour market and the associated risks of exploitation see Focus on Labour Exploitation, *Risky Business: Tackling Exploitation in the UK Labour Market* (2017) <https://www.labourexploitation.org/publications/risky-business-tackling-exploitation-uk-labour-market>

¹²³ *Ibid*

¹²⁴ The level of 'In work' poverty is rising across the UK, JRF found that 72% of children in poverty have at least one parent in work. The government has recognised this trend of low wages vs high living costs and that in work benefits are necessary for preventing destitution. For more information see: *Joseph Rowntree Foundation (2017), UK Poverty 2017: A comprehensive analysis of poverty trends and figures*, https://www.jrf.org.uk/sites/default/files/jrf/files-research/uk_poverty_2017.pdf

Sarah's Story

At the time of application, Sarah was working as a full-time carer, working four night shifts per week in a nursing home. She was also the sole carer of two daughters aged 17 and 12, both of whom are in full-time education. Her youngest daughter is British. Both the children's fathers had left and were uncontactable.

In order to support the family Sarah was working additional day shifts in a different care home after her night shifts finished, but she was unable to sustain this as her health suffered very badly.

Although Sarah was still working full-time, her average income was approximately £1,450 per month, and her rent was £1,200 per month, which left too little for the family's other essentials.

Sarah had to move the family, but the only accommodation that she could afford was a single room in an unlicensed House in Multiple Occupation (HMO), where the three of them had to share one bed. The family did not have sufficient access to the communal facilities in the house and the children often had

to relieve themselves in the garden because they could not gain access to the toilet in time. The inadequate accommodation took a toll on the children's wellbeing; they had no space to study at home and the younger daughter did not want to eat because she was being bullied at school for being poor.

The Home Office initially refused this family's application for recourse to public funds, on the grounds of not having enough 'independent documentary evidence' to prove the inadequacy of their accommodation, despite Sarah providing 139 pages of documents with her application.

The Home Office's decision was challenged by way of judicial review, and recourse was granted.

Had Sarah had recourse to public funds, a combination of housing benefit and tax credits would have supplemented her income to a level at which the family could subsist in their accommodation and meet their basic living needs. They would not have been forced to move and the children's wellbeing and education would not have been put at risk.

4.2 iii Disabled People

Key Findings:

1. The NRPf policy indirectly discriminates against people with disabilities because they are less likely to be able to work and are at an increased risk of destitution.
2. Disabled people with NRPf are, on account of not having access to disability related benefits, disproportionately prevented from meeting their essential living needs and prohibited from participating in society.

27% percent of people in the Unity Project's dataset suffer from a disability, all of whom are working age adults¹²⁵. Some examples of the disabilities recorded in the dataset include cancer, sickle cell anemia, HIV, lupus, sciatica and diabetes.

Nineteen percent of families in the Unity Project's dataset have a disabled child. This includes disabilities such as autism, cerebral palsy, sickle cell anemia, epilepsy, and mental health problems including severe depression, anxiety and psychosis.

More than half (58%) of disabled people assisted by the Unity Project could not work at all due to their disability.

The overrepresentation of disabled people in the telephone survey sample and in the Unity Project's dataset evidences the increased vulnerability disabled people with NRPf have to destitution. This can be explained by the increased likeness of unemployment amongst disabled people with NRPf. Lower levels of income can also be linked to the likely higher outgoings faced by those with disabilities, including extended costs such as travel. These results also show that, due to their additional needs, disabled people are likely to be more severely affected by destitution because of their NRPf status.

¹²⁵

Disability has a broad definition in law. In line with Section 6(5) of the Equality Act 2010 this report considers a person to have a disability if that person has 'a physical or mental impairment, and the impairment has a substantial and long-term adverse effect on the person's ability to carry out normal day-to-day activities' see, <https://www.legislation.gov.uk/ukpga/2010/15/section/6>

These findings are contextualised by broader UK-wide research on disability. National statistics show that disabled adults are 30% less likely to be employed than non-disabled working-age people. Our study's findings corroborate this, but also indicate even higher rates of unemployment amongst disabled people with NRPf. A reason for this could be attributed to the fact that those who are more severely affected by the NRPf condition - and therefore need support - are more likely to be restricted from employment by their disability. In addition, there may also be cases where disabled people with NRPf who are physically able to gain employment are unable to do so because they are not able to access the Department for Work and Pensions' work-related programs which support disabled people into employment.¹²⁶

The Joseph Rowntree Foundation's report, *Destitution in the UK 2018*, evidences that all disabled and sick children and adults in the UK are at a disproportionate risk of destitution.¹²⁷ As the NRPf policy has not been designed with adequate consideration of needs of disabled people, and no automatic adjustments are made for disabled people by the Home Office in relation to the provision of public funds, the NRPf condition heightens this disproportionate risk evidenced by the Joseph Rowntree Foundation. The ultimate effect of this is to leave disabled people - as illustrated in Jake's experience (see Jake's story) - far more likely to have their basic needs neglected. When disabled people with NRPf are unable to access their essential living needs they are likely to be deprived of their opportunity to equally participate in society, a right set out by the Equality Act 2010.¹²⁸

Jake's Story

Jake came to the UK when he was under 10 and has lived here for over half his life. He and both his parents have LLTR with NRPf.

Jake has Dystonic Cerebral Palsy, Dyskinetic Motor Disorder, G6PD deficiency and severe learning difficulties. He also has hearing and sight impairments and wears a hearing aid. Jake's conditions mean that he is wholly unable to care for himself and has no income of his own or ability to generate it. He is totally dependent on his parents, his full-time carers, for assistance with all basic and essential care and other needs.

Though he has been offered a full-time place at a special needs college, he was unable to continue education after turning 18 because of his NRPf status.

Jake lives in wholly inadequate accommodation because of the NRPf condition. His entire family share a single bedroom, Jake and his father in a double bed and his mother on a single mattress on the floor. The flat is on the first floor of the building and can be accessed only via staircase. There is no lift. Jake has to be taken out of his wheelchair and carried up the stairs to reach the flat, his wheelchair

then brought up separately. Jake rarely leaves the house. The flat itself lacks adequate provisions to cater for Jake's disabilities. For example, there is no disability adaptation in the bathroom and no hoist above the bath. Jake's health and wellbeing is severely impacted by his accommodation, and so too is that of his parents.

Jake's application for recourse to public funds was refused and his parents remain in this situation.

Were Jake to be given access to public funds but not his parents, it would be of no material benefit to him. Jake is wholly dependent on his parents. Jake requires 24-hour care and without his parents also being able to access public funds they cannot live with him and he cannot live an independent life.

If Jake and his parents were granted recourse to public funds, they would be entitled to disability-adapted ground floor accommodation and his parents would be able to access carers allowance to help them meet his needs. Jake would be entitled to various essential services, he would be able to attend a special-needs college and would have a far greater opportunity to engage in society.

¹²⁶ An example of an employment access programme for disabled people includes Work Choice: <https://www.gov.uk/work-choice>

¹²⁷ Fitzpatrick, Bramley, Sosenko, et al (2018), *Destitution in the UK: 2018*, Joseph Rowntree Foundation, <https://www.jrf.org.uk/report/destitution-uk-2018>

¹²⁸ Equality Act 2010, ch 15, ch 2: Section 19, <https://www.legislation.gov.uk/ukpga/2010/15/section/19>

4.2 iv Maternity and Pregnancy

Key Finding:

1. Pregnant people and those in maternity period are disadvantaged from accessing employment and have higher outgoing costs. This causes them to suffer disproportionately as a result of not having access to public funds.

Five percent of all applicants assisted by the Unity Project have been pregnant or had given birth a maximum of six months prior to submitting a CoC application.

Pregnant people and those in the period of maternity (defined as being up to 26 weeks, or six months, after giving birth)¹²⁹ cannot be expected to work and are likely to be unemployed for a significant period of time. These findings show that as a result of unemployment pregnant people with NRPF are disproportionately vulnerable to destitution.

A review of the Unity Project's case files show that this vulnerability to destitution leaves many pregnant women with NRPF unable to take sufficient maternity leave before or after the birth of their child. In one case, a heavily pregnant single mother continued with her physically demanding job as a careworker up until less than a month before her due date, despite her work causing her pain and extreme discomfort.

Expectant mothers with NRPF who have paid National Insurance contributions, or have been in work prior to giving birth, are entitled to maternity allowance and Statutory Maternity Payments (SMP) because they are contributory benefits rather than 'public funds'. However, Statutory Maternity Pay is subject to the individual having worked for a certain amount of time prior to going on maternity leave, as well as other qualifying criteria.¹³⁰ Often, women's entitlement to SMP is therefore limited by not having been able to work a sufficient number of consecutive weeks prior to going on maternity leave - due to factors such as not having had LLTR with entitlement to work, or childcare commitments - or because of working jobs without sufficient protections, such as zero hours contracts or other informal forms of

labour (see above). At the date of writing, aside from six weeks paid at the rate of 90% of a previous wage, SMP amounts to maximum £148.68p/w.¹³¹ Thus, when SMP is not supplemented by additional benefits, it is insufficient to cover the costs of rent and living essentials.

Expectant mothers with NRPF who have been unable to work prior to giving birth, for reasons such as those discussed above, have no access to maternity-related financial state support. This is particularly problematic for single mothers who are more likely to lack other significant sources of support and will have no earned income over this period: these make up the majority of CoC applicants (see Chapter 3). If they are with a supporting partner, they will be reliant on a single earned income to support a family of at least three. Both scenarios, our study shows, are directly related to destitution.

Expectant parents with NRPF not only face the inevitability of a reduced income, but they will experience additional costs, including the high, one-off costs of items such as cots and prams as well as ongoing expenses such as nappies, formula milk, and wipes. The Money Advice Service's 2018 study found that, in the first month of a baby's life, parents have to spend on average £500.00 on such essential products.¹³²

Charles Larson's 2007 study for the *Pediatric Child Health* journal found poverty during pregnancy to increase the risk of prenatal and early child health conditions including premature birth, fetal growth restriction, childhood developmental issues, as well as infant death.¹³³ Larson's study found these risks to be directly linked to maternal socioeconomic status because pregnant women in poverty are more likely to experience specific life events including homelessness, unemployment, inadequate overcrowded or polluted living environments, and they are likely to have far fewer resources to deal with such exposures. The life experiences Larson references are faced by most of the people documented in this study's telephone surveys (see Chapter 5), including those who were pregnant while living with NRPF.

¹²⁹ In line with the Section 18 of the Equality Act 2010, this report considers a person to be in maternity stage and protected from maternity-based discrimination for 26 weeks following the day a person gives birth. For more information see Citizens Advice, *Pregnancy and maternity discrimination* <https://www.citizensadvice.org.uk/law-and-courts/discrimination/what-are-the-different-types-of-discrimination/pregnancy-and-maternity-discrimination/>

¹³⁰ Statutory Maternity Pay and Leave, Employer guide: <https://www.gov.uk/employers-maternity-pay-leave/eligibility-and-proof-of-pregnancy>

¹³¹ *Ibid*

¹³² Money Advice Service, *What is the average cost to have a baby?* (2018) <https://www.moneyadviceservice.org.uk/blog/what-is-the-average-cost-to-have-a-baby>

¹³³ Larson, C., *Poverty during pregnancy: Its effects on child health outcomes* *Paediatric Child Health*. 2007 Oct; 12(8): 673–677. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2528810/>

4.2 v Black and minority ethnic (BME) British Children

Key Findings:

1. Most families with NRPF have a British child and nearly all of these families are black and minority ethnic (BME)
2. NRPF is inherently more likely to affect BME British children than white British children indicating the indirect racially discriminatory impacts of the condition

94% of families seen by the 6 external organisations participating in this study had at least 1 British child. 84% of the families seen by the Unity Project had at least 1 British child. In both case sets, more than 95% of these British children were BME British children.

The Home Office does not record data on the nationalities or ethnicities of children.

The restriction of access to benefits resulting from the NRPF policy has a knock-on effect on all children in NRPF families with low-no income and the consequences of destitution on all children will be explored in Chapter 6, but the indirect discrimination faced by BME British children specifically on account of their race is of note here.

British children whose parents are subject to NRPF are, this study's statistics show, likely to be BME children. In comparison, British children whose parents

are not subject to NRPF are likely to be white. The effects of NRPF therefore have an indirect discriminatory impact on BME British children.

At each stage of development, children who are British with NRPF are more likely to face material disadvantages and disadvantages in opportunity - in comparison with their British peers who are not from NRPF families.¹³⁴ As toddlers, British children in NRPF families are restricted from full access to childcare; and at school, they are restricted from free school meals. As explained in Chapter 5, British children whose parents have NRPF are more likely to live in overcrowded and inadequate housing at risk of eviction and homelessness, they are at an increased risk of malnutrition and food poverty, and their prospects in life are more likely to be curtailed by insecurity and deprivation. British children in NRPF households where there are instances of domestic violence are less likely to be safe than British children with British parents because their mothers may not be able to receive the support they may need to leave a violent partner.

These discriminatory effects of the NRPF condition on BME British children are set within the existing context of structural racism in the UK; 2019 research collated by the Runnymede Trust explains how structural racism is defined by a series of processes which limit BME children's (and adult's) access to power, resources and representation; holding them back from achieving their cultural, political and economic potential.¹³⁵ For example, BME children are more likely to be working class than their white counterparts¹³⁶, they are 9 times more likely to be stopped and searched by the police compared with their white peers,¹³⁷ and 40% of all young people in custody are from BME backgrounds.¹³⁸

¹³⁴ BME children constitute 95% of the British children in this study's dataset, according to the 2011 Census, 86.0% of the total population of England and Wales was white; see <https://www.ethnicity-facts-figures.service.gov.uk/british-population/national-and-regional-populations/population-of-england-and-wales/latest>

¹³⁵ Runnymede Trust, Connecting the dots: structural racism in 2019 <https://www.runnymedetrust.org/blog/connecting-the-dots-structural-racism-in-2019-and-beyond>

¹³⁶ *Ibid*

¹³⁷ Stop and Search, Home Office Statistics (2019) <https://www.ethnicity-facts-figures.service.gov.uk/crime-justice-and-the-law/policing/stop-and-search/latest>

¹³⁸ The Lammy Review (2017) <https://www.gov.uk/government/publications/lammy-review-final-report>

Chapter 5 - What are the impacts? Experiences of destitution

This report establishes that those with protected characteristics are worse affected by the NRPF condition than those without (see Chapter 3 and Chapter 4). In order to understand the extent to which people with protected characteristics are impacted by the NRPF condition, this chapter turns to the experience of individuals of destitution and living with the NRPF condition, with a particular reference to the inadequacy of accommodation and lack of essential living needs.¹³⁹ Understanding the extent to which this policy affects specific demographics of people is essential to assess the Home Office's claim of 'proportionality' as a means to maintain the legislative legitimacy of the NRPF policy.¹⁴⁰

This chapter also addresses the experiences faced by children in NRPF families, documenting the impact NRPF has on their safety and welfare. The evidence shows that the government's legal duty to protect the welfare of all children is frequently neglected as a result of the NRPF policy.

The reports of destitution faced by applicants and their children documented in this chapter call into question how far the Home Office is complying with its obligations under Article 3 of the European Convention on Human Rights (and therefore the Human Rights Act 1998) which requires a preventative (rather than reactionary) approach to destitution and inhuman treatment.¹⁴¹

5.1 Defining destitution

5.1 i What does destitution mean in law?

As outlined in Chapter 2, people who are granted LLTR on the ten-year route on the grounds of family life, private life or outside the Rules, can apply to have the NRPF condition removed if they can prove they are 'destitute', or that there are 'particularly compelling reasons relating to the welfare of a child', or there are 'exceptional circumstances relating to their financial circumstances'.¹⁴²

In relation to the non-imposition or lifting of the NRPF condition, the Home Office applies the same definition of destitution used to measure the provision of support to asylum seekers and their dependants set out under section 95 of the Immigration and Asylum Act 1999. The Home Office considers a person destitute if they can prove that:

- '1. They do not have adequate accommodation or any means of obtaining it (whether or not their other essential living needs are met); or
2. They have adequate accommodation or the means of obtaining it, but cannot meet their other essential living needs.'¹⁴³

Some further clarification is given in the policy guidance, which states that there are no set monetary values assigned to the assessment of destitution, and that an applicant's individual circumstances - if evidenced - will be taken into account by decision-makers who are afforded powers of discretion.¹⁴⁴

The specific meaning of 'adequate' or 'essential' is not explicitly defined and this inconclusivity warrants some

¹³⁹ See Section 1.2 for a breakdown of telephone respondents.

¹⁴⁰ NRPF Policy Guidance (2019), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/766782/5yr-routes-guidance-v1.0ext.pdf

¹⁴¹ Case law has established that compliance with Article 3 of the European Convention on Human Rights requires steps to be taken to prevent destitution see, R (Limbuela) v SSHD [2005] UKHL 66 <https://publications.parliament.uk/pa/ld200506/ljjudgmt/jd051103/adam-1.htm>

¹⁴² Request for a change of conditions of leave granted on the basis of family or private life, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/421399/NRPF10.pdf

¹⁴³ Definition of destitution set out in Section 95, Immigration and Asylum Act 1999 <https://www.legislation.gov.uk/ukpga/1999/33/section/95>, and Section 19, Nationality, Immigration and Asylum Act 2002 <http://www.legislation.gov.uk/ukpga/2002/41/section/19>

¹⁴⁴ NRPF Policy Guidance (2019), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/766782/5yr-routes-guidance-v1.0ext.pdf

interpretation, the need for which - as explained in Chapter 6 - often presents a challenge to those endeavouring to evidence eligibility. This report integrates the judgment in the case of *Refugee Action v SSHD* (2014) in which it was ruled that 'essential living needs' also encompass a sufficient level of participation in society to allow for the the opportunity to foster interpersonal relationships and engage with educational, cultural, religious and political life.¹⁴⁵ The adoption of this ruling into the definition of destitution is in alignment with the duty the Home Office carries - legislated by the Equality Act 2010 - to ensure that its policies are designed to 'encourag[e] people from protected groups to participate in public life or in other activities where their participation is disproportionately low'.¹⁴⁶

5.2 What causes desitution?

Our findings show that the NRPf condition detrimentally affects certain groups of people because it makes them more vulnerable to specific circumstances that push them towards destitution. These circumstances include, 1) Being underpaid and/or underemployed, 2) Being unable to work, 3) Living in inadequate accommodation or being at risk of eviction, and 4) Suffering a relationship breakdown. The Children's Society's 2016 report *Making Life Impossible* evidences the connection between many of these factors and destitution.¹⁴⁷ These findings indicate that the NRPf condition, particularly when it intersects with one or several of these other factors, is in itself also a causal factor of destitution.

5.3 Living with 'no recourse to public funds'¹⁴⁸

Key Findings:

Accommodation

1. Nearly all of those surveyed had experienced severely inadequate and overcrowded accommodation, including 52% being forced to sleep on a floor or chair. Most of these were women with children.
2. Unaffordable costs of private rental accommodation means that families are rely on extended social networks and become at an increased risk of exploitation and/or homelessness. Six percent of participants in the Unity Project's telephone research were single women who had experienced street homelessness with their children whilst living with LLTR and NRPf.

Living Essentials

1. Over half of the NRPf families participating in the Unity Project's research - most of whom are single mothers with children - had been reliant for one-to-five years on informal support to meet their basic living needs before seeking help to make a CoC application.
2. Seventy-four percent of people surveyed experienced at least one day where they could not afford to eat a hot and nutritious meal.

5.3 i Accommodation

a) Inadequate Accommodation

Eighty-three percent of the telephone survey participants who were paying rent whilst living with NRPf, fell behind with rent payments during the period they had NRPf. All of these apart from two reported having fallen behind on rent payments more than twice a year.

¹⁴⁵ *Refugee Action v The Secretary of State for the Home Department* [2014] EWHC 1033 (Admin) <http://www.bailii.org/ew/cases/EWHC/Admin/2014/1033.html>. For further information see: *The Asylum Support Regulations 2000*, <http://www.legislation.gov.uk/ukSI/2000/704/contents/made>

¹⁴⁶ *Equality Act 2010, Public Sector Equality Duty, Part 11, Chapter 1* <https://www.legislation.gov.uk/ukpga/2010/15/part/11>

¹⁴⁷ Dexter, Z., Capron, L., and Gregg, L. (2016) *Making Life Impossible: How the needs of destitute migrant children are going unmet*. London: The Children's Society: <https://www.childrensociety.org.uk/sites/default/files/making-life-impossible.pdf>.

¹⁴⁸ Most of this data are from telephone surveys; 90% of telephone respondents were women; 88% were single; 100% had children, and 78% had one British child. See Chapter 1.2 for information on the demographics of telephone survey respondents.

Four out of five telephone survey respondents incurred debt (through formal and/or informal lenders) to pay bills such as heating, water, electricity, mobile phones and council tax.

Families and individuals with NRPF are typically prevented from accessing welfare support to assist with the cost of accommodation, such as housing benefit,

social housing, and council tax reductions. These findings show that, for families and individuals with low or no income subject to NRPF, the lack of access to mainstream benefits induces a struggle to maintain rent costs. This is compounded by the fact that people with NRPF are wholly dependent on the private rental sector rather than more stable - and often cheaper - social housing.

Fig 8.i: The cost of rent:

52 responses

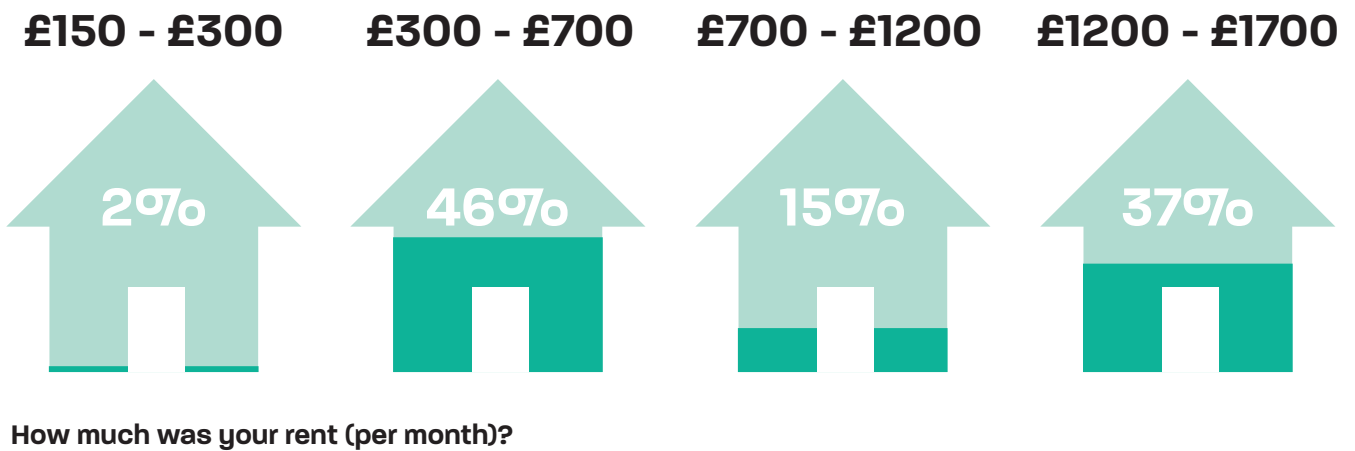
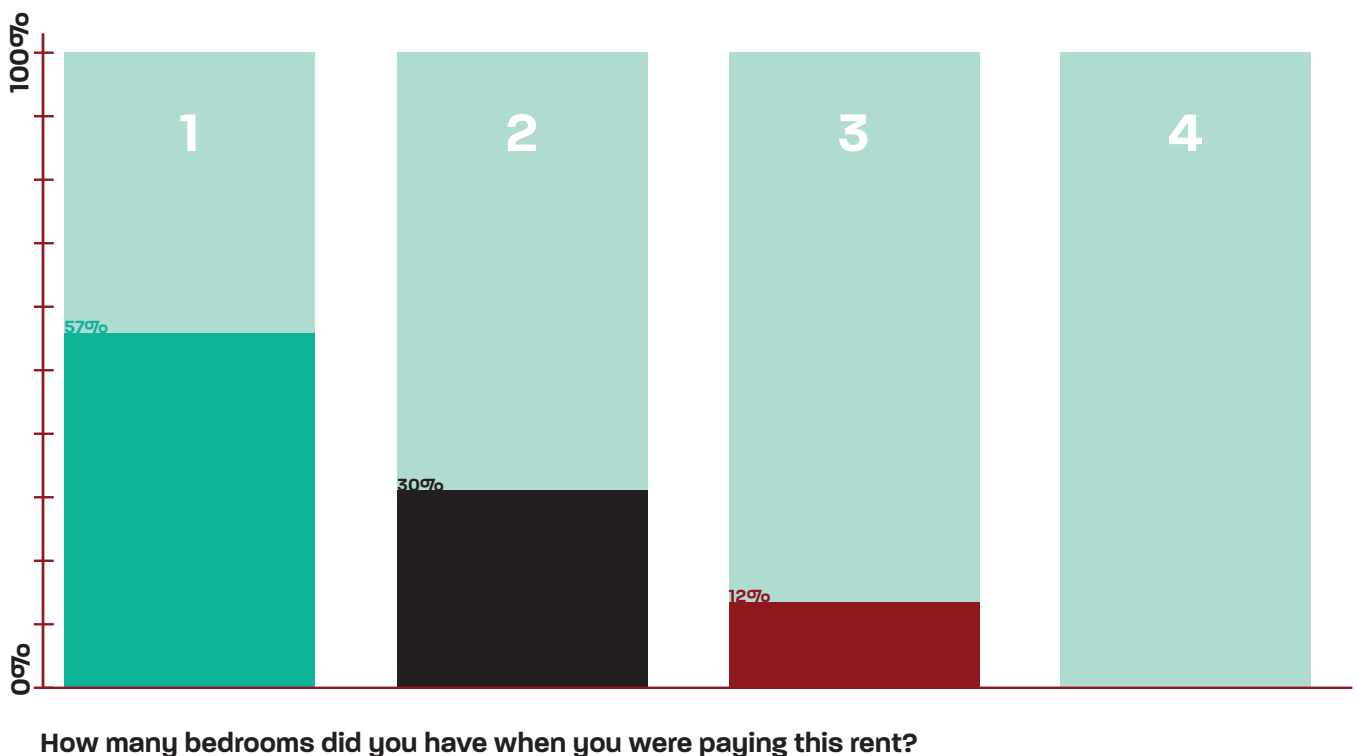


Fig 8.ii: How many bedrooms:

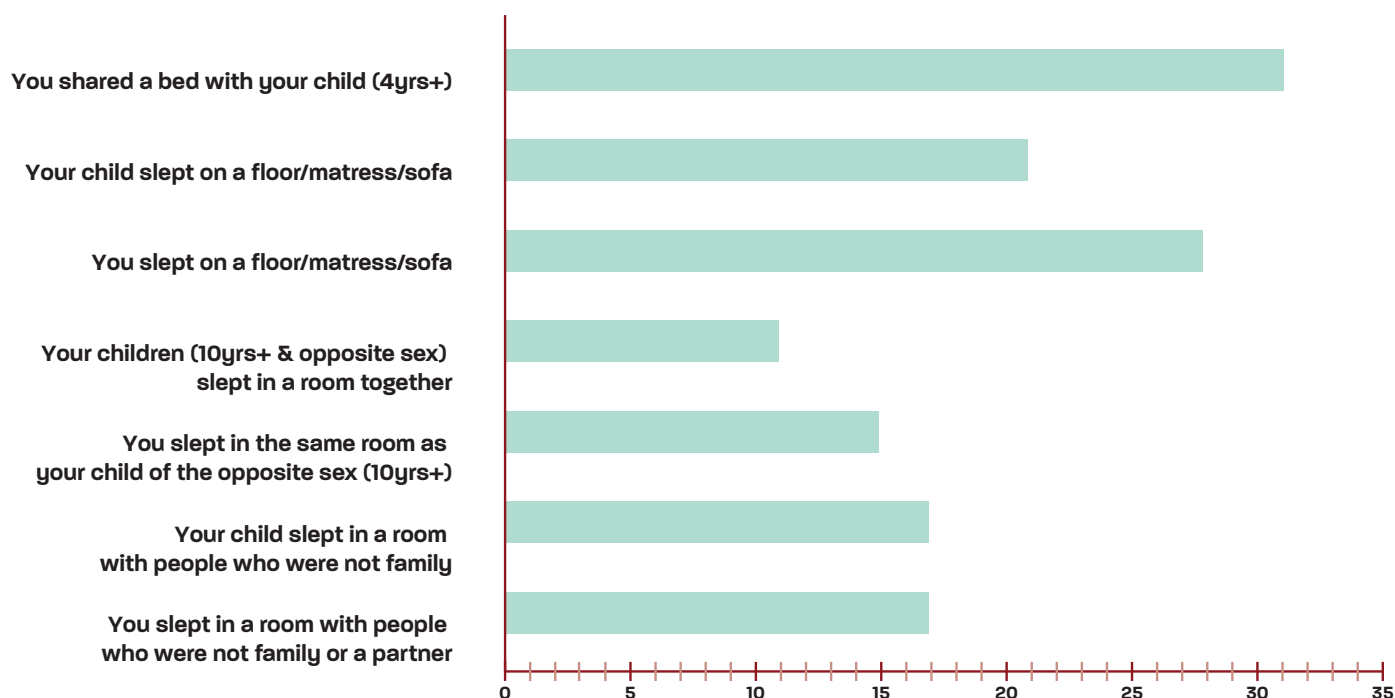
57 responses



Telephone survey responses indicate that most people paid between £300-£700 in rent and more than half of those paying rent had just one bedroom in their home (fig 8.i-8.ii).

Fig 9: *Sleeping arrangements:*

54 responses



The fact that 48% of respondents were paying £700p/m or less for rent (see fig 8.i) and that the average cost of rent (according to the London Rents Map) in Enfield - the borough in which most (17%) telephone survey respondents lived - for a one bedroom property is £1,000p/m, suggests that - in most cases - the accommodation applicants were or are living in may not have been adequate for a family's needs.¹⁴⁹ Given that 100% of respondents had children, these findings indicate that widespread overcrowding characterises these inadequate living conditions.¹⁵⁰

This is corroborated by the findings on sleeping arrangements, 59% of respondents said that they had to share a bed with their children (fig 9). Inadequate and overcrowded accommodation presents a serious health hazard, particularly to children, and presents notable safeguarding risks. Andy Jolly's study *No Recourse to Social Work? Statutory Neglect, Social Exclusion and Undocumented Migrant Families in the UK*

(2018) links inadequate shelter to child developmental problems including slow language development, malnutrition due to a restricted access to cooking facilities and respiratory problems such as asthma. Poor living conditions, Jolly argues, can also have lifelong psychological and emotional impacts on children, increasing their chances of developing mental health issues.¹⁵¹

b) Precarious living conditions and homelessness

Six percent of telephone survey respondents did unpaid work or favours for their landlord in lieu of rent payments.

Six percent of telephone respondents survey experienced street homelessness as a result of their inability to pay rent.

These findings evidence that levels of destitution caused (or unmitigated) by the NRPF condition put

149 Housing and Land: London Rent Maps, <https://www.london.gov.uk/what-we-do/housing-and-land/renting/london-rents-map>

150 These results exclude responses from applicants who did not pay rent or couldn't remember how much their rent was.

151 Jolly, A (2018) *No Recourse to Social Work? Statutory Neglect, Social Exclusion and Undocumented Migrant Families in the UK*. Birmingham: Cogitatio <https://www.cogitatiopress.com/socialinclusion/article/view/1486>

families and individuals at an increased risk of falling into dangerous and exploitative living conditions including street homelessness. Whilst this study does not evidence what kind of work people are doing in lieu of rent, it signals the heightened exposure to exploitation. Considering that 100% of telephone respondents had children, produces particular safeguarding concerns.

Previous reports, such as The Children’s Society’s report *Making Life Impossible* have evidenced similar scenarios. The Children’s Society highlighted cases where people have engaged in ‘ambiguous transactional relations’ for accommodation, involving sex and domestic labour.¹⁵²

Street homelessness and exploitation amongst NRPf families and individuals can be linked to this study’s findings on the widespread reliance on informal extended networks for accommodation.

Eighteen percent of respondents had family or friends paying their rent for them.

A quarter of respondents relied on family, friends or acquaintances for somewhere to stay where no rent was required.

Two-thirds of study participants and their children were asked to leave their accommodation with nowhere else to go.

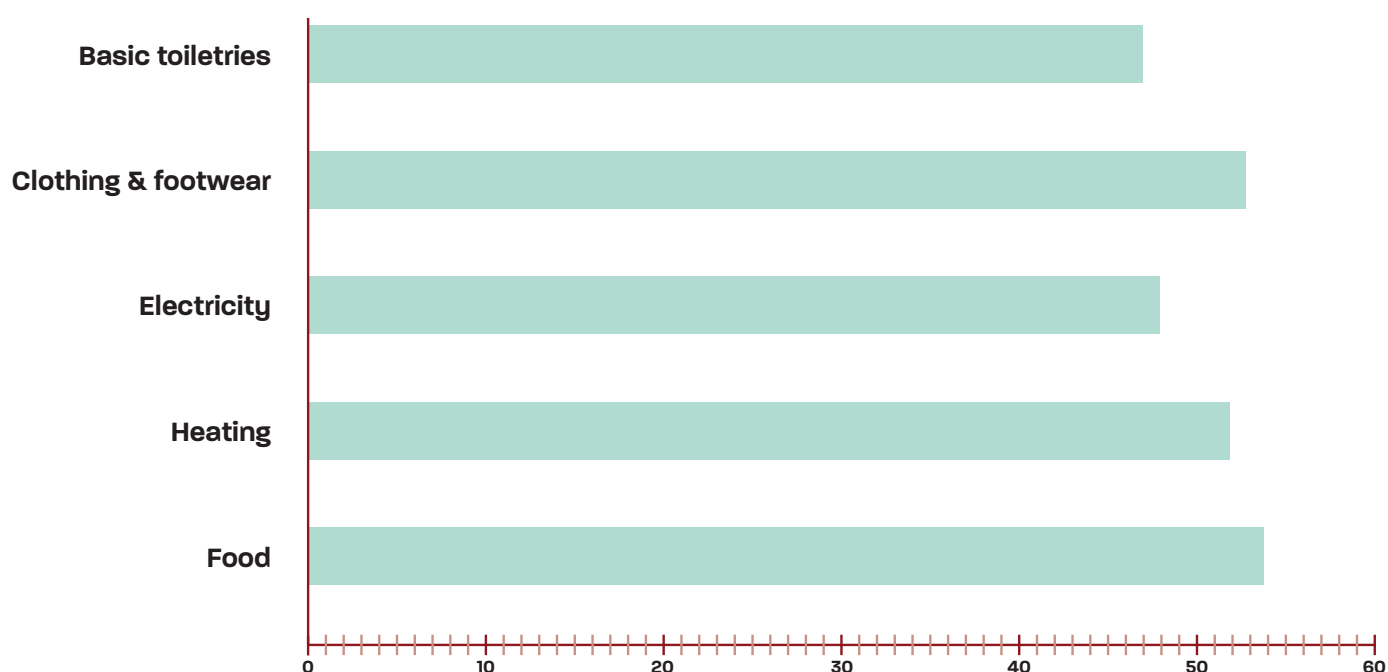
Sixty-four percent of families involved in this study responded that they moved accommodation more than twice a year

The rife reliance on informal extended-networks and the goodwill of family and friends reported here represents a trend of precarious living arrangements. Relying on informal networks for accommodation produces unequal power relations which can lead to exploitation. It can also lead to extreme overcrowding, adding pressure to relationships. Families living in informal living arrangements are also not afforded formal protection from eviction. Project 17’s 2019 report *Not Seen, Not Heard: Children’s Experiences of the Hostile Environment* draws attention to the stress and anxiety induced in children by being forced to move away from school, friends and support networks.¹⁵³ This is corroborated by letters written by children in destitute NRPf families (see below).

5.3 ii Basic living essentials

Fig 10.i: Living Essentials

Question: Did you or your children ever consistently go without any of these essentials (because you could not afford them)?

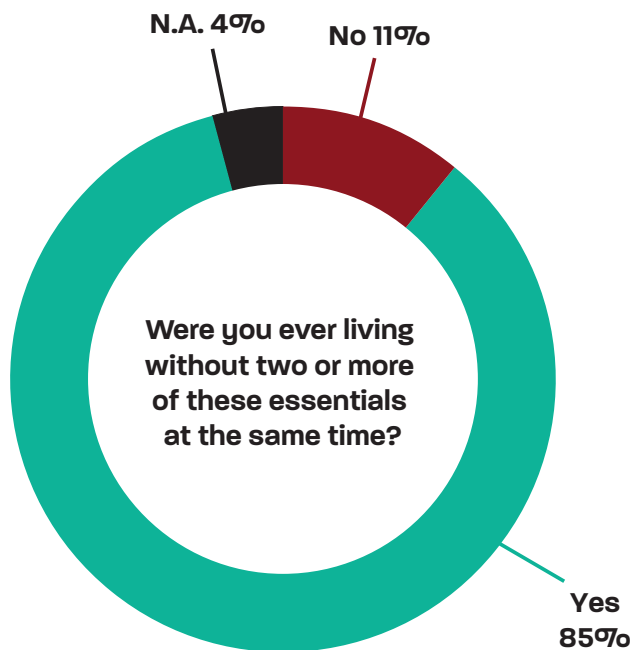


¹⁵² Dexter, Z., Capron, L., and Gregg, L. (2016) *Making Life Impossible: How the needs of destitute migrant children are going unmet*. London: The Children’s Society. <https://www.childrensociety.org.uk/sites/default/files/making-life-impossible.pdf>

¹⁵³ Dickson, E (2019) *Not Seen, Not Heard: Children’s experiences of the hostile environment*. Project 17 <https://drive.google.com/file/d/1zsVpKqJ0hohTLJjV4KD-PuQppwQnqneeN/view>

Fig 10.ii: Living Essentials

66 responses



Seventy-four percent of people surveyed experienced at least one day where they could not afford to eat a hot and nutritious meal.

Seventy-three percent said they did not have two pairs of properly fitting shoes suitable for all weather.

Eight in ten people surveyed said they had been unable to keep their accommodation warm without cutting back on essentials.

This study found that over half (55%) of the NRPF families who participated in this study relied on informal networks to cover the cost of basic living essentials such as food and clothing for as long as one to five years before seeking help with making a CoC application. Food, clothing and heat constitute basic needs, and our findings show a thread of people with NRPF living for prolonged periods without multiple such essential items.

The Joseph Rowntree Foundation's 2017 study of poverty in the UK reported a link between poverty and the cost of essential goods and services, which have risen faster than the rate of inflation.¹⁵⁴

This illustrates the often concealed reality of living in destitution, including the extreme destitution that ap-

plicants and their children are forced to suffer before they become eligible to access the safeguard mechanism. This is despite the fact that, under Article 3 of the ECHR this mechanism should act as a preventative, rather than reactionary, means for avoiding inhuman or degrading treatment.

5.4. The effect of NRPF on children¹⁵⁵

Key Findings:

1. More than half of all parents surveyed said they could not afford to buy each of their children two pairs of shoes and a coat.
2. More than half of parents said there had been at least one day where their child had not been able to eat a hot meal, because they could not afford to provide it.
3. A third of parents said their child had to sleep in a room at night with people who were not family.
4. Thirty-eight percent of parents said their child's education had been interrupted on account of the destitution they faced.
5. Ninety four percent of families with NRPF could not afford to celebrate special occasions, such as their children's birthdays.

¹⁵⁴ Joseph Rowntree Foundation (2017), *UK Poverty 2017: A comprehensive analysis of poverty trends and figures*, https://www.jrf.org.uk/sites/default/files/jrf/files-research/uk_poverty_2017.pdf

¹⁵⁵ 100% of the children involved in our telephone surveys are BME children.

5.4 i Food Poverty and Lack of Basic Living Needs

Fig 11: Food Poverty:

Q. Did your children ever experience at least one day where they could not afford to eat a minimum of one hot and nutritious meals?

Evidence of food poverty amongst children from NRPF families is significant, with 54.5% of parents reporting that their children experienced at least one day where they did not eat a hot meal (see fig 11). As previously explored, food poverty is linked to living in accommodation without access to cooking facilities, as well as the exclusion of children whose parents have NRPF from free school meals.

66 responses

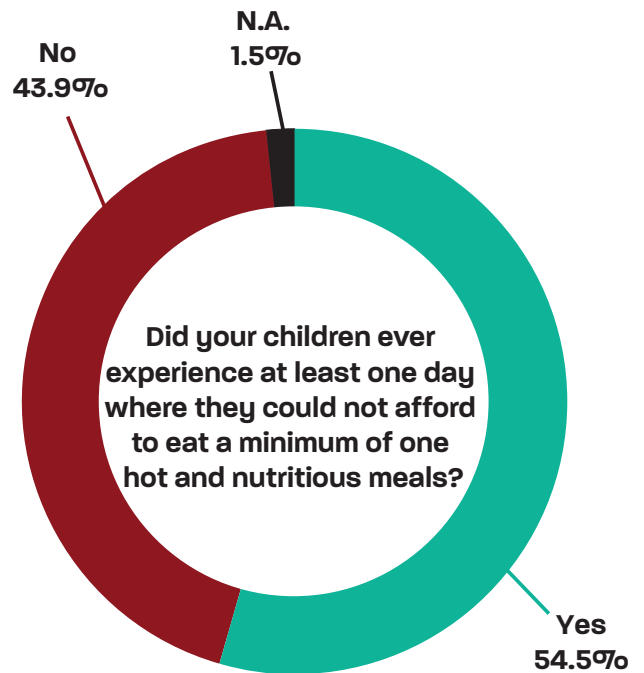


Fig 12: Children's Shoes:

Q. Did your children have two pairs of properly fitting all weather shoes?

66 responses

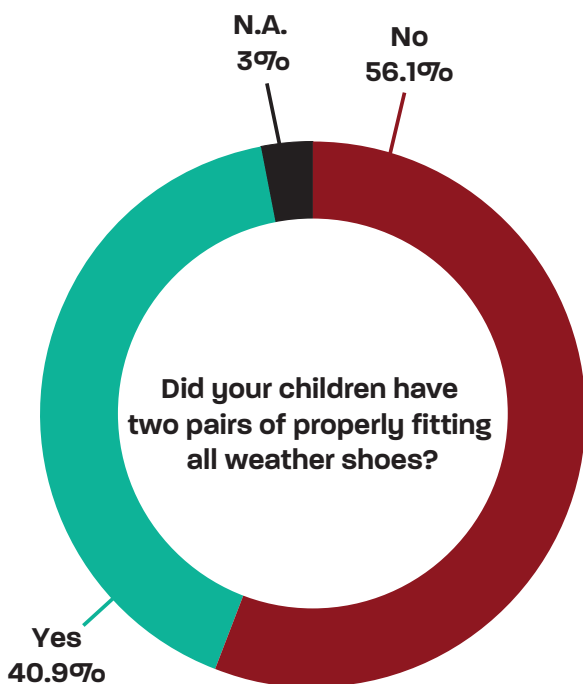
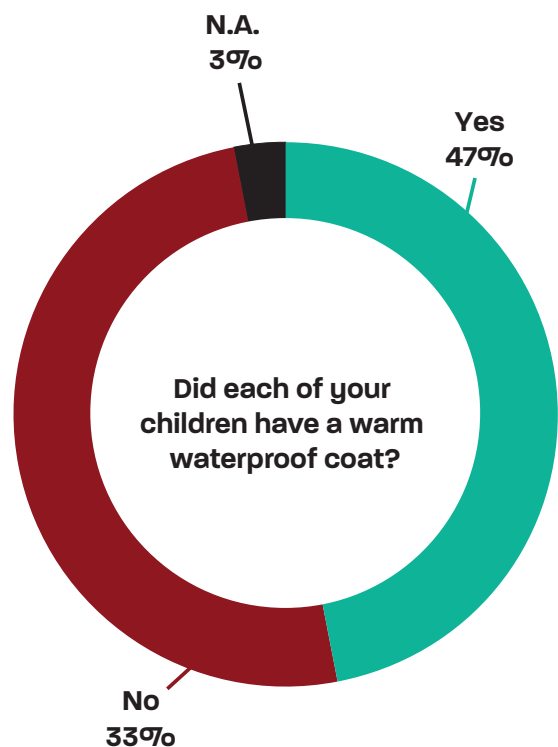


Fig 13: Child's coats:

Q. Did each of your children have a warm waterproof coat?

66 responses



The material deprivation evidenced here indicates that children from NRPF families are more often than not going without the necessities required to keep them warm, leaving them increasingly vulnerable to the cold and cold-related sickness.

5.4 ii Accommodation

Seventeen telephone survey respondents (24.8%) reported that they were left with no choice but to make their children sleep in a room with people who were not related to them whilst living with NRPF. This poses significant safeguarding risks. The sleeping arrangement which was most commonly reported was for parents to sleep in the same bed as their children - 59% of respondents reported this to have been the case. Both scenarios also deprive children, particularly teenagers, of their dignity and having no privacy raises other psychological issues such as low self esteem and shame.¹⁵⁶

Children themselves expressed fear and concern about overcrowding and living with strangers (see Appendix 7 for the children's letters)¹⁵⁷. 'TD' who is an eleven-year-old British citizen, wrote:

“It is so disgusting to share the same bathroom with strangers and loads of people don't even clean. It is also just a very unfortunate life.”¹⁵⁸

'AJ', aged 11, explained:

“Living in an overcrowded house has made me feel very upset and I always find myself not wanting to come home. I don't like being in this house.”

5.4 iii Education

Twenty-five of our telephone survey participants (38%) reported that their children's schooling had been interrupted, either through missing days of school or having to move schools, as a result of their destitution. Others reported additional issues that they felt had impacted on their children's education, including not having access to free school meals, regularly being late to school because of the distance taken to travel their

from home, and a delay on entering higher education.

As ten-year-old 'KS' wrote:

“I find it hard to go to school in the morning because the place is too far from my school and I have to wake up at 4.30 in the morning in order to reach school on time. It takes us 2 ½ hours. This makes me so tired and my mum. I find it difficult to concentrate in class as well as doing my homework because I always feel sleepy and tired because of the long journey.”¹⁵⁹

Children from families with NRPF also often have reduced access to education because of financial constraints. The Children's Commission on Poverty established that families are required to spend £800 a year on school costs.¹⁶⁰ For parents with NRPF, covering the full cost of school uniforms, trips, lunches, and transport to and from school, is often impossible. Children expressed fear, shame and sadness about not having a school uniform and not being able to attend school trips.

Ten-year-old 'SD' explained:

“It took very long for my parents to get my uniform due to financial problems. I was very scared that I thought I was not going to school. My uniform was bought a few days before school started. In primary [school] I had these same feelings. In Year 6 we had a reward trip which cost a lot. My parents were very stressed and didn't know if I would go. All my friends were going but I didn't have my hopes up high.”¹⁶¹

¹⁵⁶ For more information on the impact of inappropriate housing on the wellbeing of children see The Children's Society's 2018 Good Childhood Report <https://www.childrensociety.org.uk/what-we-do/resources-and-publications/the-good-childhood-report-2018>

¹⁵⁷ The experiences of the children have been documented in letters written by them and submitted with their parents' CoC applications.

¹⁵⁸ TD

¹⁵⁹ KS

¹⁶⁰ The Children's Commission on Poverty (2014), *Through Young Eyes: At What Cost? Exposing the Impact of Poverty on School Life*, https://www.childrensociety.org.uk/sites/default/files/At_What_Cost_Exposing_the_impact_of_poverty_on_school_life-report_%20summary.pdf

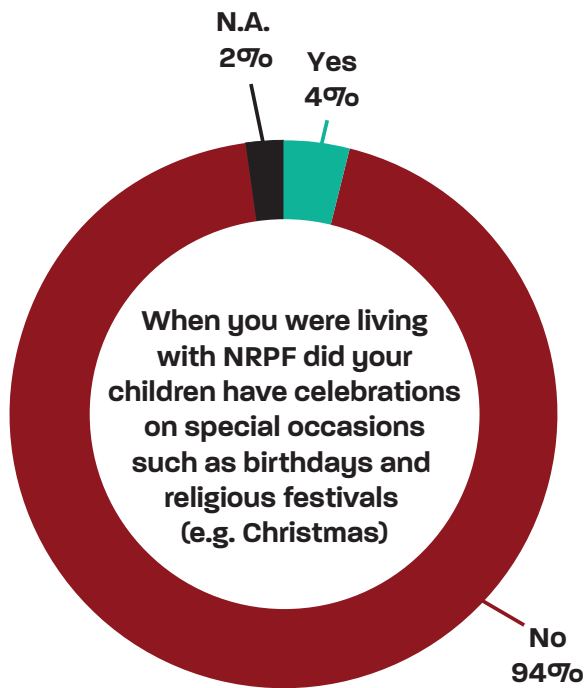
¹⁶¹ SD

5.4 iv Deprivation of experience

Fig 14: Special occasions

Q: When you were living with NRPF did your children have celebrations on special occasions such as birthdays and religious festivals (eg. Christmas)?

65 responses



Children growing up in destitute NRPF families lack the experiences that many would argue are central to a happy childhood, such as celebrating birthdays and religious festivals like Christmas. 94% of telephone survey respondents (see fig. 14) said they could not afford to celebrate their children's birthdays or other religious festivals. Children expressed awareness of not having access to the experiences which are afforded to their peers. 'TD' (eleven years old) wrote:

“Basic things my family struggle on: I don't get pocket money, never get birthday party struggle to pay for trips, and don't even have our own house to be free in.”

'SD' added:

“In secondary [school] everyone gets pocket money except me so I can't get anything extra. I don't think it is fair.”

'SD' explains,

“Since I was young I didn't have the life of a normal child. My family couldn't afford many things.”

5.4 v Impacts on Emotional Wellbeing

Children reported various issues with their mental health and wellbeing when they wrote about their experiences, including being stressed about their parents' mental wellbeing. 'AZ' (eleven years old) said,

“I feel as if I am losing myself and I fear living here has also affected my mental state as I can't even think properly anymore.”

'KR' (15 years old) records,

“I really feel my mum's pain and I have developed a great fear that she may suffer depression in the near future. I am terrified that something bad might happen to her.”

Children also discussed the NRPF condition as a barrier preventing them from succeeding in later life. Eleven-year-old 'TD' wrote to the Home Office:

“Please help my parents take care of me and my siblings so we can have a good future.”



24.03.18

Chapter 6 - The Change of Conditions Application: Barrier or safeguard

This research sought to explore whether or not the change of conditions application (CoC) functions as a safeguarding mechanism. Whether the application process fulfills the Home Office's legal duty to 'mitigate ... reduce or remove [the] adverse impacts'¹⁶² of NRPF by preventing people with protected characteristics from falling into destitution or enabling them to alleviate their destitution.

This chapter presents evidence that there are procedural barriers which prevent potentially eligible people from being able to make a CoC application. It shows that the application is too difficult to make without specialised legal assistance and that there is a lack of organisational capacity in the UK to meet the demand for help with the application. This research reviews all refusal decision letters received from the Home Office in response to applications made by the Unity Project between September 2017 and April 2019 to explore why the CoC application is too difficult for people to make alone and what prevents applications from being successful.

The last chapter concludes that there are barriers to evidencing destitution and, in many cases, the application process acts to *prolong* deprivation - with detrimental effect to the children in these families. Of the 16 applications made with the assistance of the Unity Project that were refused, ten were overturned after a legal challenge, one decision remains pending, and three were successfully resubmitted. This shows how, in several cases, the Home Office's initial interpretation of the law was erroneous. It is also key to note that the Home Office has not explicitly referenced its obligations to address potential discrimination under the Equality Act 2010 in any of the refusal letters in the Unity Project's sample; this despite case law establishing that compliance with the equality duty requires public bodies to assess and evidence the particular effects on those with protected characteristics at the time the decision is taken. The Public Sector Equality Duty (PSED) is not satisfied by public bodies justifying their decisions *after* they

have been taken - as has been the case with several of the Home Office's refusals in this sample.¹⁶³

6.1 Finding help

Key Finding:

1. Evidence shows CoC applications are much less likely to be successful when made without assistance, but that there is not enough support available for potential applications looking for help.

6.1 i Who needs help?

Ninety-percent of telephone-survey respondents who attempted to make a CoC application independently were unsuccessful. Of these 95.5% were later successful when assisted by the Unity Project.

The Home Office response to a Freedom of Information (FOI) request submitted by The Children's Society indicated that between April 2015 and December 2018 they accepted 55% of applications.¹⁶⁴

These findings indicate that the CoC application is difficult - and in some cases impossible - to make without specialised legal assistance (the reasons for which will be explored later in this chapter).

In 2018, a total of 1,452 destitute people with LLTR and NRPF approached the 14 referral services contributing to this report (see survey 1 in methodology) for advice relating to their destitution. The Unity Project - which has never advertised its services beyond the scope of three local referral agencies - received over 250 referrals in the 22 months between May 2017 and March 2019. This shows that there is a clear need for people to make a CoC application and a demand for assistance given the application's complexity.

¹⁶² Equality and Human Rights Commission (2014), The Essential Guide to the Public Sector Equality Duty, https://www.equalityhumanrights.com/sites/default/files/psed_essential_guide_-_guidance_for_english_public_bodies.pdf

¹⁶³ Ibid

¹⁶⁴ FOI response by the Home Office, requested by The Children's Society, received February 2019.

6.1 ii Who can help?

A Freedom of Information (FOI) request submitted to the NRPF Network evidences that of the 389 homeless families with LLTR on the ten-year route to settlement subject to NRPF who were supported by their local authority under s17 (from September 2017-September 2018), only 200 made successful CoC applications.¹⁶⁵

Families supported under s17 have been assessed by a public body as destitute and, although Home Office policy stipulates that this assessment does not

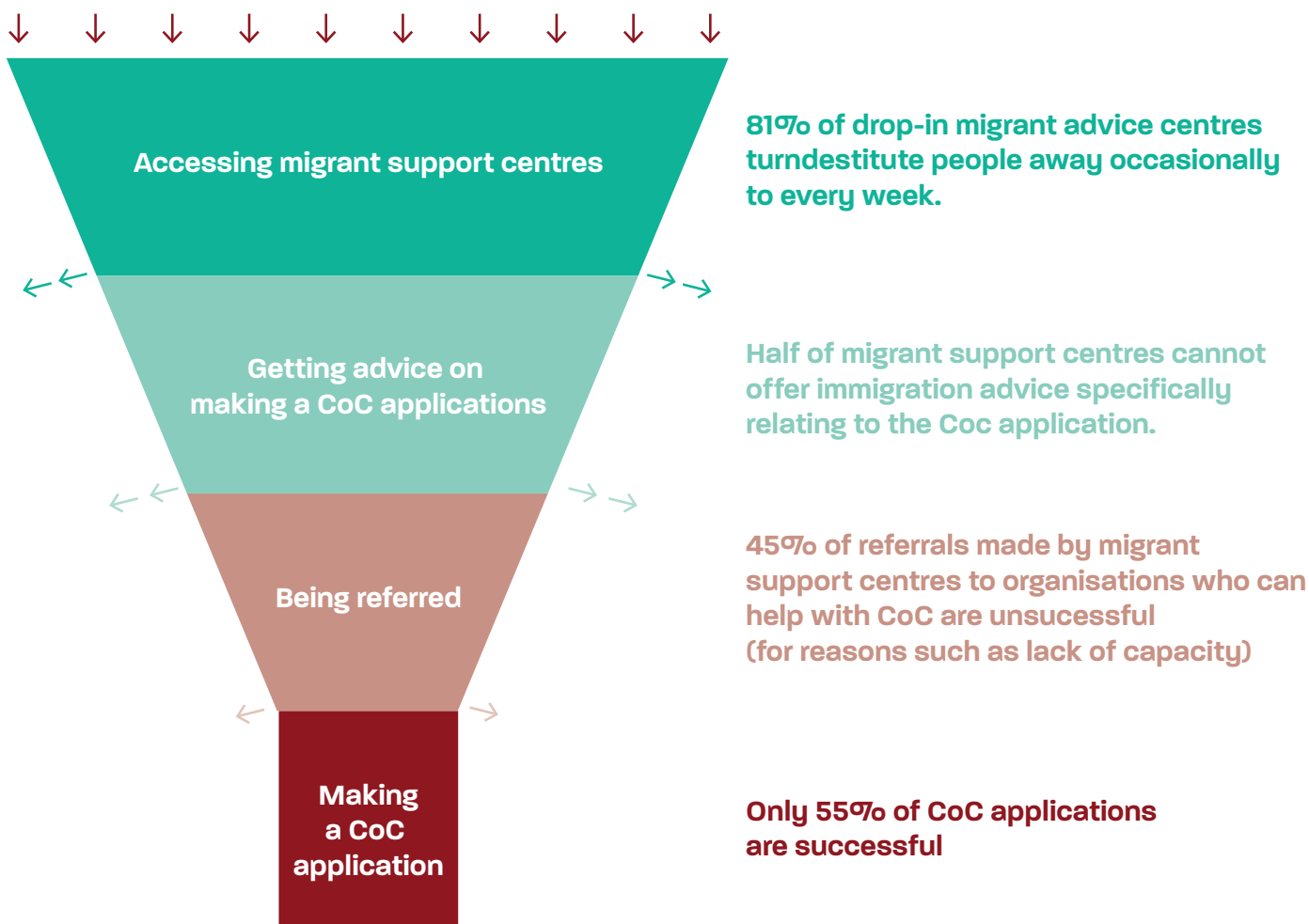
automatically equate to a successful CoC application, it is assumed that the 189 families who did not make successful CoC applications in this period were not able to find appropriate support from their local authority or assistance from a charity to do so. Our findings signify that many who are eligible to make a CoC application are prevented from doing so because they face significant hurdles accessing help.

Responses to our organisational surveys illustrate that lack of organisational capacity poses an, at times unassailable, primary barrier to accessing help.

¹⁶⁵ FOI response by the NRPF network, requested by the Unity Project, received January 2019.

Fig 15: Advice Funnel¹⁶⁶

Destitute people with LLTR subject to NRPF seeking help



¹⁶⁶ Figures used are from responses to online survey 1 and online survey 2

Lack of capacity begins at the stage of a potential CoC applicant receiving initial information, migrant support centres cannot meet the demand for help.

Most migrant centres are unable to help directly with the CoC application in order to repeal a NRPF classification. There is limited provision of advice in relation to the CoC application from migrant centres because organisations must be regulated by the Office of Immigration Services Commissioner (OISC) at Level 1 to provide any advice or assistance with making a CoC application.¹⁶⁷ Centres do not need to be OISC regulated solely to make referrals, however nearly half (45%) of the 335 referrals made in 2018 by the 14 referral

organisations who contributed to this report were unsuccessful. Individuals and families who succeed in accessing initial advice and information about the option of making a CoC application are then faced with the fact that very few organisations or lawyers offer advice and support with it in the first place. The absence of legal aid for the CoC application¹⁶⁸ has produced a situation where solicitors are compelled to refuse assistance to destitute individuals.

This study has found the Unity Project to be the only organisation which helps people exclusively with the CoC application. Charities and community law centres who help with the CoC application alongside other areas of advice are often at full capacity - indicated by 45% of referrals being unsuccessful. The Unity Project, for example, cannot meet the need for help, and often has to close off to referrals for extended periods due to limited capacity.

When we telephoned a sample of 38 of the Level 1 OISC registered organisations who did not respond to our request for survey responses, half of these said they were unaware that they were eligible to assist with the CoC application.

Some potential CoC applicants face material barriers accessing support. Disabled, elderly and pregnant people as well as those with childcare responsibilities may not be able to travel to reach support centres. It may also be impossible for individuals on a low income to take time off work to attend a drop-in centre or an appointment, or be able to afford the upfront travel costs.

Outside of London there are fewer migrant centres, and the Unity Project has received referrals from as far as off as Devon, suggesting that geographical location could be a primary barrier to accessing support.

6.2 Issues with making the application

Key Findings:

1. Potentially destitute CoC applicants are faced with procedural barriers preventing them from submitting successful applications because the application itself is inaccessible for those without a medium or high level of literacy;
2. Requirements for extensive amounts of evidence-collection are onerous and sometimes unrealistic for applicants;
3. The thresholds for meeting and interpreting the definition of 'destitution' are problematic.

6.2 i. The application system

The Home Office sets out their requirements for applicants seeking to request the removal of the NRPF condition in a 10-page application form, the 'Request for a change of conditions of leave granted on the basis of family or private life', in which applicants, at a minimum, must be able to explain and evidence their financial situation in detail.

This form is only available in English. In order to be able to read this form, and meet the minimum requirement of the application itself, a level of literacy is required without which the application cannot be made without extensive assistance.

If applicants do possess the level of literacy required to complete the application, the Home Office does not provide clear and accessible guidance about how to do so. This is evidenced by a number of refusal letters which cite missing information, despite no mention in the current guidance that this information is required.

The complexity of the application process is exacerbated by the extensive time it takes to prepare, and the financial poverty of those that seek to do so. The

¹⁶⁷ See, NRPF Network, Application to remove NRPF condition is regulated immigration advice (2016), <http://www.nrpfnetwork.org.uk/News/Pages/change-of-conditions-OISC.aspx>

¹⁶⁸ See, NRPF Network, Legal Aid and Finding Advice (2016) <http://www.nrpfnetwork.org.uk/information/Pages/Legal-advice.aspx> also see the Joint Committee on Human Rights' 2018 report on the human rights concerns relating to the reduction of legal aid <https://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/news-parliament-2017/enforcing-human-rights-report-published-17-19/>

process of applying to have the NRPF condition lifted often adds to the high levels of stress most applicants are facing. All applicants and their children are subject to the same application process. The Home Office has not implemented a more direct or streamlined system for people who, for example, have complex care needs or are due to give birth imminently.

6.2 ii. Evidence

The Home Office's 2019 guidance states that an applicant must provide evidence of their financial and living situations.¹⁶⁹ The evidence discussed below must be submitted and re-submitted each time an applicant applies for FLR if they continue to require access to public funds in order to prevent the NRPF condition being imposed or re-imposed over the course of 10-years.

a. Bank Statements

The Home Office requires six months bank statements for every account belonging to each applicant and their dependants, including any dormant accounts. Applications will likely be refused without this. In one case the Home Office refused an application made with the assistance of the Unity Project on the grounds that an applicant had not provided six months' worth of statements for an account which had been dormant for two years. They stated: 'The bank statement you provided for account ending [XXX] was not sufficient for our purposes as it did not cover a period of six months. Whilst you state that the account had been empty for two years, the statement you provided did not provide evidence of this.' The applicant had provided a statement from two years prior showing there had only been a single transaction from this account.

Applicants are expected to annotate all 'major and regular' transactions on these statements, a process which requires them to remember the purpose of multiple transactions from up to six months ago. This is an invasive and onerous process, and is made especially burdensome by the lack of explanation given in the Policy Guidance as to what constitutes for the Home Office a 'major and regular' transaction.

Annotating statements can be particularly difficult when an applicant only uses their bank card to withdraw cash. The Home Office has, in the case of one refusal letter, argued that without a full explanation of what this cash was spent on they are 'unable to assess' whether

an applicant meets their and their family's essential living needs'. This is despite the applicant demonstrating that their income was, on average, £289.71p/m, which is clearly insufficient to cover the cost of rent and living essentials.

It is unclear why the Home Office requires statements covering a six month time period when applicants apply for recourse to public funds on the basis of their present situation. Refusal letters show that the Home Office frequently focuses on months prior to the application, regardless of the applicant's current income or bank balance.

b. Evidencing living conditions

Precarious living conditions faced by many applicants and their children (see Chapter 5) mean they often lack the formal structures and arrangements which the Home Office expects them to evidence in their CoC application. When an applicant has not signed a lease or is staying - together with their children - with a friend or acquaintance, they have no choice but to provide 'informal' documentation evidencing the arrangement.

Refusal letters illustrate that the Home Office frequently fails to use its discretion in these instances and has, on multiple occasions, requested official documentation in the form of a tenancy agreement, for example, despite explicit submissions as to why this is unobtainable. Some applicants may be forced to move accommodation frequently and reside with more than one family member or friend due to homelessness. Far from taking this as an indication of destitution, the Home Office has refused an application because there have been multiple addresses evidenced in the submissions, despite submissions as to why this was the case.

In light of the cost and impracticality of an applicant acquiring a 'letter confirming the inadequacy of [their] accommodation from a health visitor, social worker or other health and social care professional', when none of these professionals are involved with the family, it is discouraging to see the Home Office refuse applications in at least eight cases on the grounds of lack of 'independent' evidence to this effect. By nature of their precarity many families on the ten-year route may not be engaged in services that others take for granted, such as social and healthcare services. In one refused case, the applicant was sleeping on a sofa in an unconverted garage and, despite accepting these living

¹⁶⁹

NRPF Policy Guidance (2019), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/795223/10-year-routes-guidance-v4.0ext.pdf

arrangements to be true, the Home Office refused the application on the grounds that they could not confirm that this accommodation could be considered inadequate without a professional review.

c. Evidencing Eviction

Applicants and their children facing eviction from an informal housing arrangement, who in many cases become street homeless, have been unsuccessful in their CoC application because they have been unable to provide official eviction notices. In one such case, despite an enclosed letter from the applicant's sister stating the reasons she could 'no longer support' the applicant and her family and needed them to leave the overcrowded accommodation, the Home Office responded: 'We note that you have been living with your sister and her family since 2006, and have not provided any evidence to demonstrate why it has suddenly [sic] become inadequate.'

Sometimes it is impossible for applicants to provide any documentation evidencing an eviction. This is often due to the insecurity of the relationship between the applicant and their hosts or landlord or landlady. This includes cases where a landlord/lady, informal or otherwise, has harassed the applicant to leave by means of, for example, threatening to change the locks, but has not yet started official eviction proceedings. Understandably, applicants in this situation are often unable or reluctant to ask their landlord/lady for written evidence of circumstances such as rent arrears for fear of triggering a (potentially illegal) eviction. In one such case, the Home Office refused a CoC application on the basis that:

You have stated that you have been provided with accommodation my [sic] [landlady] and that you have been asked to leave this accommodation by 31 July 2018. However [landlady] is unwilling to confirm this arrangement 'as she does not wish to be formally involved in the matter' and no documentary evidence addressed to you from official sources has been provided.

In the same vein, the Home Office has, in multiple cases, ignored explanations of hosts being reluctant to provide evidence in cases where, for example, the hosts' own tenancy prohibits them from subletting or lodging, or because the evidence required does not exist, in, for example, cases of informal agreements.

These explanations, and the concerns applicants voice for their children's welfare in these situations, are frequently disregarded by Home Office decision-makers who often cite identical grounds for refusal from one case to another, irrespective of the extent of evidence provided to explain the informality and inadequacy of accommodation.

d. Evidencing support from the other parent(s) of dependent children

Seventy-six percent of CoC applications reviewed by this study are submitted by single parents (see Chapter 4). In such cases the Home Office often overlooks the obvious barriers the applicant might face getting support from the children's other parent (or parents), and evidencing the unwillingness of the other parent to provide support.

In all refused applications in our sample, if it was not possible for an applicant to obtain evidence as to why the other parent(s) could not offer financial support, the reasons for this were explained. In many cases applicants had lost all contact with the other parent(s) and were therefore unable to pursue them even for confirmation of their unwillingness to support.

In at least three decision letters from the sample the Home Office overlooked this explanation and requested instead that the applicant evidence that they have approached the Child Support Agency (CSA), despite the fact that the applicants had stated that they did not have enough information about the other parent(s) to do so. If a parent has not supported their children in the past, then it is unlikely that the CSA will be able to resolve this, despite their destitution.

Refusal letters suggest that the Home Office sometimes expects applicants to approach abusive partners or ex-partners for evidence that they are not able or willing to support their child. In one such case the Home Office requested that the applicant demonstrate her partner's 'current income and contribution to the family unit including any evidence of his employment, wage slips, bank accounts and a letter explaining his support.' This was despite the clear submissions in the original application that the partner was aggressive, abusive and unwilling to support her or her child financially. Unsurprisingly, the abusive partner was not compliant. The applicant was forced to continue living with him since she could not afford to leave without recourse to public funds; she was also ineligible for the DDV Concession in the Immigration Rules, which,

as previously noted, is only available to people with spousal visas.¹⁷⁰

Refusals on these grounds run the risk of entrenching dangerous situations of domestic abuse. They represent an example of government policy directly creating and/or further entrenching vulnerability for people already facing domestic violence.¹⁷¹

e. Evidencing other financial support

Applicants can face unreasonable and/or onerous evidential requirements not only relating to their personal financial situations but also - it would seem from decision letters - regarding the situation of family and even extended family, even where these family members have stated in letters enclosed in the application that they do not, and cannot, support the applicants. In one case the Home Office refused an application because the applicant made no submissions as to why distant relatives could not support her:

We note that you have wider family in the UK, including those who sponsored members of your family immediate [sic] to enter the UK. You have not demonstrated that you could not cohabit with these family members.

6.2 iii Issues with decision making and the thresholds set

a. What are considered ‘essential living needs’ and a reasonable source of income to provide these for a family

The decisions made on refused CoC applications indicate that Home Office decision-makers apply varying interpretations of ‘essential living needs’ and ‘adequate accommodation’, including which sources of income can reasonably be relied upon for their provision. In one instance, the Home Office excluded the cost of rent from the definition of ‘essential living needs’. This inconsistency presents a challenge for applicants and immigration advisors assisting applicants in their attempt to interpret and evidence destitution according to Home Office requirements, and frequently delays the lifting of the NRPF condition and prolonging destitution.

Requests for letters from friends and even distant fam-

ily, sometimes demanding evidence of their own financial situations such as bank statements, indicates that the Home Office considers reliance on informal networks to be an adequate source of income. The unsuitability of relying on informal networks to relieve or prevent destitution is outlined in Chapter 3 of this report.

The Home Office has refused CoC applications on the grounds that applicants should treat money they have saved specifically for the cost of their FLR applications, for themselves and/or their children, as a source of income. One application was refused on the basis that the applicant had, ‘consistently made payments into [their] savings account, amassing a peak amount of around £1,958 as noted in the cover letter.’

This is despite explicit submissions that (a) the amount of savings had decreased to £1,600 since this ‘peak’ due to the applicant being forced to use her savings for rent and bills, and (b) the applicant was diligently saving to pay the application fee for her imminent Further Leave to Remain (FLR) application. The FLR application was due to be submitted and paid for within a 28 day window, beginning two weeks after the date the CoC application was received - and rejected - by the Home Office. The application fee was, along with the Immigration Health Surcharge, a total of £1,493, therefore depleting the applicant’s savings to less than £200.

Furthermore, decision letters evidence cases where the Home Office has - rather than grant access to public funds - compelled people on the verge of destitution to run into debt. Decision-makers have suggested that applicants can continue relying on credit as a source of income for obtaining their essential living needs, stating in one refusal: ‘You also have access to a credit card to help meet your living needs.’

b. What is considered to be ‘adequate accommodation’ and who this is provided by

The Home Office has deemed as ‘adequate’ accommodation from which an individual or family is to be imminently or inevitably evicted. In one such decision letter they stated:

We acknowledge the evidence of arrears and Notice of possession provided in support of the application. However, this documentation does

¹⁷⁰ Destitute Domestic Violence Concession Guidance (2018): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/679269/victims-of-domestic-violence-and-abuse-DDV-concession-v1_0.pdf

¹⁷¹ It should also be noted that evidencing incoming and outgoing expenditure may be particularly difficult for women facing abuse as they may not have control over their finances.

not demonstrate that you do not have adequate accommodation or any means of obtaining it because as stated in your cover letter and the documentation provided, this has been adjourned ... Currently there is no finalised Eviction Notice in place against you and no evidence that accommodation is at imminent risk.

What's more, in three decision letters the Home Office refused recourse to public funds on the grounds that applicants should instead approach their local authority or homeless charities for access to adequate accommodation, in one such case stating:

We acknowledge your claim that you are homeless and currently living with various friends. However, this does not demonstrate that you do not have adequate accommodation or any means of obtaining it because you have not provided any evidence of having approached the local authority or homeless charities for assistance.

As explained in Chapter 2, local authority accommodation - for various reasons explored in detail elsewhere¹⁷² - does not provide an adequate or long-term solution to an applicant and their children's destitution. Negative decisions made by local authorities regarding a family's eligibility for s17 support are used as a justification for a CoC application refusal, as evidenced in this letter:

[Local council] have declined to offer you and your family any accommodation or subsistence payments, and as such we must conclude that they do not consider you to be destitute and do not consider your child to be at risk or to be a child in need.

This is at odds with the NRPF Policy Recommendations (2019) in which they state that local authority assessments are distinct from Home Office decision-making processes with regards to CoC applications, and that eligibility for support under one duty does not warrant support under another.¹⁷³

6.3 Consequences

Key Findings:

1. The process of preparing and submitting a CoC application is long and, as a result, applicants can face prolonged emotional, physical and financial hardship..

Considering the procedural issues identified above as well as the difficulties faced by applicants trying to find support and advice, the CoC application process often leads to a considerable prolongation of an applicant and their children's destitution. The process of getting advice, waiting to receive help, making the application and waiting for a decision can take many months, during which applicants can suffer severe hardship. Results from our surveys show that in 11/66 (11%) of cases it took between three to six months to prepare an application. The time it takes to gather documentation often constitutes a considerable amount of this time; sometimes applicants have to travel to and from, for example, friends' houses, charities, their church, GP surgeries, their children's schools and multiple bank branches numerous times to ensure their documents meet current requirements.

Many applicants are already in a crisis when they begin the application process. The time it takes to make the application can put a significant strain on people's mental health, on top of the application process itself being highly stressful on account of it requiring people to recount and document traumatising events such like abuse and homelessness. In order to gather evidence for the CoC application, people are forced to explain their situation of poverty to family, friends, colleagues and figures such as their children's school teachers.

Applicants also face physical risks and hardship during the application period. Applicants and their children often stay with families who do not want them there, share beds or sleep on floors, share rooms and facilities with strangers and go without basic necessities. They are also at increased risk of eviction and homelessness, which can lead to the loss of their jobs and children missing school. In addition, because there is

¹⁷² For information on the inadequacy of s17 support see, Threipland, C. (2015). A Place to Call Home: A Report into the Standard of Housing Provided to Children in Need in London. London: Hackney Community Law Centre and Hackney Migrant Centre <https://www.hclc.org.uk/wp-content/uploads/2015/12/A-Place-To-Call-Home-Electronic-Report1.pdf>, for information on provision of support Price, J. and Spencer, S. (2015) Safeguarding children from destitution: Local authority responses to families with 'no recourse to public funds', Oxford: COMPAS. https://www.compas.ox.ac.uk/wp-content/uploads/PR-2015-No_Recourse_Public_Funds_LAs.pdf

¹⁷³ NRPF Policy Guidance (2019), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/795223/10-year-routes-guidance-v4.0ext.p

no effective support net for applicants experiencing domestic violence, people may be forced to stay with abusive partners throughout this period.

Finally, there can be financial costs to making a CoC application. Whilst the application itself is free, applicants often have to cover costs such as fees for GP letters to evidence medical conditions, which can amount to £50 or more. If applicants manage to find help with making the application they may have to take time off work and find childcare in order to attend appointments. For people who are already destitute the impact of these costs is significant. However, if they do not pay them they have less chance of receiving a successful decision for their application to remove the NRPF condition.

It is also the case that applicants may be forced to turn to private lawyers on account of not being able to find anyone to assist them for free. The irony of applicants having to pay to evidence their destitution because the application process is too complex to navigate alone, is striking.

Conclusion

Pregnancy/maternity, disability, age and sex are protected characteristics under the Equality Act 2010, and - with regard to those with NRPF - this research shows that women, pregnant people, disabled people and children are more likely to be impacted by the negative effects of the NRPF condition and that this impact will be more severe for these groups.

Women are more likely to be single parents and - on account of being restricted from full access to free childcare schemes for disadvantaged families, as well as not being entitled to receive the childcare element of working tax credits - single mothers subject to NRPF are often unable to take up full time employment and are more likely to fall into destitution. The risk of being subject to domestic abuse is more acute for women, particularly migrant women, and for migrant women with NRPF who are subject to domestic abuse the NRPF policy can prevent them from accessing DV support services. Indirect sex-based discrimination resulting from the NRPF policy is also faced by pregnant women subject to NRPF who are at a high risk of destitution due to the fact that they are unable to work for a significant time before and after they give birth and will have higher outgoings due to their newborn baby.

People with disabilities are often unable to secure consistent work that is appropriate to their needs, if at all, meaning their income is often lower. People with disabilities may also have higher outgoing costs related to their disabilities, resulting in a disproportionately higher risk of destitution. The Care Act 2014 is subject to eligibility criteria relating to the person's care needs, so cannot be relied on as a safeguard for all disabled adults with NRPF

Although this report did not find any statistical discrimination against elderly people, age is a protected characteristic and people of pension age are less likely to be able to work full-time, if at all, or to gain future employment, meaning pensioners with NRPF may have little-to-no income.

Our study shows that most families with NRPF have at least one British child, and that a vast majority of these children are BME children. These children face less fa-

vourable treatment than British peers who have British parents and are likely to be white. Not only are children from NRPF families often restricted from accessing means-tested support such as free school meals; they are also more likely to experience homelessness and poverty. This treatment constitutes indirect discrimination on the grounds of race. Because the NRPF measure is directed specifically at children whose ethnic origins are non-British it could be argued that the discrimination faced by these children constitutes *direct* discrimination on grounds of race.

The high numbers of individuals with NRPF involved in this study who are in work and still experience destitution indicates that recourse to public funds is an essential safeguard against destitution for low-income families. In addition, it is found that in order to access full-time employment or enough working hours to afford the cost of living, recourse to public funds is important, because it enables working adults to sustain employment through provisions such as free childcare and Child and Working Tax Credits. Without recourse to public funds many adults are disincentivised from working, or simply unable to work.

The experiences of children who took part in this study raise acute child welfare concerns. Children in NRPF families are at a high risk of living in unsafe, frightening and insecure housing. Many children involved in this study faced malnourishment and sickness, as well as experiencing mental health and behavioural conditions as a result of severe stress and anxiety. Children in families subject to the NRPF condition frequently face disruptions to their education, and restrictions to their opportunities and experiences.

The current safeguard for anyone experiencing destitution or discrimination as a result of NRPF is the change of conditions (CoC) application. The purpose of this safeguard is to eliminate the risk of destitution and the potential of a person or family becoming subject to inhuman or degrading treatment. Case law has established that compliance with Article 3 of the European Convention on Human Rights (and therefore the Human Rights Act 1998) requires steps to be taken to prevent destitution before it occurs, not in response.

The experiences faced by people prior to making a CoC application that are documented in this study indicate that, rather than anticipating and forestalling destitution, the CoC application responds to existing destitution, which - in many cases - could have been avoided.

This study also documents the ineffectiveness of the safeguard, particularly in relation to the barriers to making a successful CoC application. These include onerous evidential requirements and inaccessible guidance about the application process. For many potential applicants, there are additional barriers of language and literacy. This means that people either cannot make the application at all, or face delays in doing so. This prolongs and exacerbates their destitution, which in turn has implications for their and their children's mental health and wellbeing.

Section 17 of the Children Act 1989 should not be relied upon by government to justify excluding families from access to mainstream benefits. It should be noted

that reliance on section 17 places an additional and significant financial pressure on local government at a time when Children's Services are subject to a severe funding shortfall. Additionally, voluntary and community sector organisations have highlighted that section 17 support may not always be readily accessed and that support provided may not always be suitable for the child's needs.

A range of organisations, including the Unity Project, have attempted to gather data to assess the effects of the NRPF policy. The data is not readily or publicly available, leading us to believe that the Home Office does not disaggregate equality data. Without this data the NRPF policy cannot be scrutinised, and scrutiny is a key mechanism for monitoring government policy. Further, without this data the Home Office is not able to demonstrate that it has complied with the PSED in relation to the NRPF policy.

Recommendations

Considering the scale of the impacts of the NRPf policy, we recommend that the NRPf condition no longer be imposed on any person on the ten-year route to settlement. Short of this recommendation, and whilst the condition is still applied to people on the ten-year route, we recommend the following changes in order to mitigate its worst effects.

Recommendations to address indirect discrimination

1. The NRPf condition should not be imposed (or reimposed) for each of the below categories of people (some which may, of course, overlap):
 - All parents with dependent children under 18;
 - Pregnant or maternity stage people;
 - Disabled people and their dependants;
 - People who have been subject to domestic abuse;
 - Pensioners;
 - People with British children.

For people who fall into one of these categories after obtaining LLTR, there should be a simplified process of application for recourse to public funds. They should be able to simply prove that they fall into one of these categories; there should be no requirement to provide substantial information about their financial circumstances. For those in the above categories who have previously successfully applied for a CoC or have been granted LLTR *with* recourse to public funds, they should be able to indicate that their circumstances have not changed.

It is also important to note that most benefits are means-tested and being given recourse to public funds does not automatically mean that people will be entitled to receive them.

2. Disabled people who have been assessed by Local Authorities as requiring care and support under the Care Act 2014 should automatically be given recourse to public funds.

Recommendation to address access to work

3. The Home Office should consider the contents of this report in relation to the inaccessibility of full-time and sustained employment for people with NRPf to work with relevant government departments to provide access to specific in-work benefits which promote further employment. Examples of this could include:
 - a) The Department for Work and Pensions extending access to working tax credits, child tax credits, universal credit and housing benefit;
 - b) The Department of Education extending access to free school meals to children from NRPf families who are in Year 3 or above, and to all funded childcare schemes.

Recommendations to address child welfare concerns

No parent with a child under the age of 18 should be given NRPf. Failing this recommendation, the Home Office should use the evidence provided by this study to:

4. Carry out a rigorous consultation with relevant professionals, experts and stakeholders to consider the welfare needs of children in NRPf families. This consultation should include the remit of preparing to conduct a full child's rights impact assessment (CRiA);
5. Automatically grant recourse to public funds to families who are assessed by local authorities as in need of support under Section 17 of the Children Act 1989.

Recommendations to address the failures of the procedural safeguard

6. The findings of this research in relation to the inaccessibility and failures of the CoC application process and guidance should be considered by the Home Office in close consultation with a range of relevant professionals, experts and stakeholders. This consultation should produce a policy impact assessment and a strategy for making the application process, form and guidance more accessible by, for example, requiring financial information from a much shorter time period than 6 months and reducing the evidential requirements.
7. The outcome of this consultation should ensure that Home Office decision makers pay explicit and close regard to Section 55 of the Immigration Act 2009 in terms of the welfare of children and to the Equality Act 2010 in terms of applicants with protected characteristics.
8. Better guidance, supervision and training for Home Office decision-makers will be necessary.

Recommendation to address unavailability of data/inadequacy of government monitoring systems

9. Make publicly available data on the numbers and demographics of people applying to have the NRPF condition removed from their LLTR visa, particularly with reference to those with protected characteristics. This data should include the ages and ethnicities of any dependants. This data should be published quarterly alongside public immigration statistics. We note that now would be an ideal opportunity to update the monitoring systems on NRPF removal applications because of the current implementation of the online system for processing immigration applications.



Appendix 1 - Online Survey 1 and Online Survey 2 Questions

Online Survey 1

Unity Project/DPG NRPF research - Survey of organisations referring clients on to make a change of conditions application

Thank you very much for taking the time to complete this survey and for your contribution to this pre-litigation research into the NRPF policy.

Unless otherwise specified please complete the questions in this form in reference to the period 01 January 2018 - 31 December 2018 and indicate whether the figures given are exact or estimates.

The information you provide in this survey you will be used anonymously in our report. By completing this survey you are consenting to this use of your data. We will not share your data with third parties. If you wish for a copy of your data, or for it to be removed from our database, please request a copy of our data protection policy from research@unity-project.org.

1a) What kind of service does your organisation provide? (Multiple Choice)

Referral
Drop-in
Other

1b) If your organisation runs a drop-in do you ever turn clients away because you have reached capacity? (Multiple Choice)

Every week
Most weeks
Occasionally
Never
Not Applicable

2) What is your weekly capacity? (short answer text)

3) How many clients has your organisation seen who are destitute with NRPF? (short answer text)

4) Are clients who are destitute with NRPF able to access immigration advice (OISC level 1 or higher) regarding their eligibility to make a Change of Conditions application within your service? (Multiple choice)

Yes
No

5) Between 01 January 2018 - 31 December 2018 how many clients did your organisation seek to refer for Change of Conditions applications? (Short answer text)

6) In how many cases was your organisation able to successfully make a referral? (Short answer text)

7) In how many cases did your organisation have to refer to more than one external organisation? (Short answer text)

8) Do you agree with the statement 'There is insufficient capacity to meet need for representation to make Change of Conditions applications'? (Multiple Choice)

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Online Survey 2

Unity Project/DPG NRPF research - Survey of organisations making Change of Conditions applications

Thank you very much for your time in completing this survey and your contribution to this pre-litigation research into the NRPF policy.

Unless otherwise specified please complete the questions in this form in reference to the period January 01 2018 - 31 December 2018 and indicate whether the figures given are exact or estimates.

The information you provide in this survey you will be used anonymously in our report. By completing this survey you are consenting to this use of your data. If you wish for a copy of your data, or for it to be removed from our database, please email research@unity-project.org.uk.

1) What kind of service does your organisation provide? (Multiple choice)

Appointments
Drop-in

2) If your organisation runs a drop-in do you ever turn clients away because you have reached capacity? (Multiple choice)

Every Week
Most Weeks
Occasionally
Never
Not applicable

3a) If your organisation runs an appointments service do you require an organisational referral? (Multiple Choice)

Yes
No, our organisation accepts organisation referrals and self-referrals
No, our organisation only accepts self-referrals
Not applicable

3b) Does your organisation have a waiting list for Change of Conditions cases?

Yes
No
Not applicable

3c) How long is the average wait time for an initial appointment? (Short answer text)

4) What is your organisation's average monthly capacity to take on Change of Conditions cases? (Short answer text)

5) Between 01 January 2018 - 31 December 2018 how many Change of Conditions applications did your organisation make? (Short answer text)

5.b) How many applications were successful? (Short answer text)

5.c) How many applications were refused? (Short answer text)

5.d) How many decisions are pending? (Short answer text)

6) How many hours, on average, does a Change of Conditions application take to prepare? (Short answer text)

7) Do you agree with the statement 'There is insufficient capacity to meet need for representation to make Change of Conditions applications'? (Multiple choice)

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly Disagree

8) When a Change of Conditions application is refused is the client offered advice from a qualified immigration advisor about the possible next steps? (Multiple Choice)

In every case

In most cases

In some cases

Rarely

Never

9) Is your organisation able to challenge unreasonable refusals? (Multiple Choice)

Yes

No

10) If 'No' do you refer to external organisations to challenge unreasonable refusals?

Yes

No

Not applicable

11) In what proportion of cases are you able to find representation to challenge unreasonable refusals?

In every case

In most cases

In some cases

Rarely

Never

Not applicable

Appendix 2 - Initial Scoping Email, Online survey 1 and online survey 2

Online Survey 1

Request for data for pre-litigation research into the NRPF policy

Hi,

The Unity Project and the law firm Deighton Pierce Glynn are conducting pre-litigation research into the no recourse to public funds policy and the Change of Conditions application.

The intention of this research project is to gather data that can inform strategic litigation to challenge the NRPF policy on the grounds that it is discriminatory and that there are systemic failings in both the implementation of the policy and its procedural safeguards (the Change of Conditions application).

I am contacting your organisation because it works with destitute migrants who may have the NRPF condition on their leave to remain and I would like to ask if you would be willing to contribute existing data to the project or help us gather new data.

If your organisation either assists clients with the Change of Conditions application in-house or seeks to refer them to other organisations that do, and would consider contributing to this research project please let me know so that I can explain in more detail, by email or over the phone, the specific data we are seeking to gather and the procedures we will follow to ensure we are compliant with GDPR.

I understand that support organisations are currently under significant strain and that capacity to participate in external projects will be very limited. However, the strength of this research and how effective it will be challenging the NRPF policy in court is dependent on having a wide data set drawn from as many organisations as possible. As the project's dedicated researcher I will ensure that the process of contributing data consumes as little of your time as possible.

If your organisation is able to consider contributing to this research project I would be grateful if you could let me know by reply to this email and include a brief description of the existing data you hold.

If you have any questions please do not hesitate to contact me.

Online Survey 2

Request for data for pre-litigation research into the NRPF policy

Hi,

The Unity Project and the law firm Deighton Pierce Glynn are conducting pre-litigation research into the no recourse to public funds policy and the Change of Conditions application.

The intention of this research project is to gather data that can inform strategic litigation to challenge the NRPF policy on the grounds that it is discriminatory and that there are systemic failings in both the implementation of the policy and its procedural safeguards (the Change of Conditions application).

I am contacting your organisation because it is listed on the OISC register as providing free immigration advice services // // because it works with destitute migrants who may have the NRPF condition on their leave to remain and and I would like to ask if you would be willing to contribute existing data to the project or help us gather new data.

If your organisation assists clients with the Change of Conditions application and would consider contributing to this research project please let me know so that I can explain in more detail, by email or over the phone, the specific data we are seeking to gather and the procedures we will follow to ensure we are compliant with GDPR.

If your organisation does not assist with the Change of Conditions applications but refers clients to other organisations that do, information about attempted/successful referrals is highly relevant to this research so please do let me know if you would consider contributing.

I understand that organisations providing free immigration advice are currently under significant strain and that capacity to participate in external projects will be very limited. However, the strength of this research and how effective it will be challenging the NRPF policy in court is dependent on having a wide data set drawn from as many organisations as possible. As the project's researcher I will ensure that the process of contributing data consumes as little of your time as possible.

If your organisation is able to consider contributing to this research project I would be grateful if you could let me know by reply to this email and include a brief description of the existing data you hold.

If you have any questions please do not hesitate to contact me.

Appendix 3 - Telephone survey questions

Unity Project/DPG NRPF research - Survey of The Unity Project Change of Conditions applicants

All questions relate to the period(s) when you had LLTR with NRPF

Destitution

1) When were you first granted Limited Leave to Remain with NRPF?

2) I will give you a list of five essentials. Please give me a yes or no answer to each. Did you or your children ever go without any of these essentials at any point whilst living with Limited Leave to Remain with NRPF because you could not afford to pay for them yourself (excluding with help from charities or friends).

Food

Heating in your home

Electricity in your home

Clothing and footwear

Basic toiletries

N/A

3) Were you ever living without two or more of these essentials at the same time?

Yes

No

N/A

2.4) How long were you living without these essentials before you found out that you could make the Change of Conditions application?

1-4 weeks

1 month - 2 months

2 months - 4 months

4 months - 6 months

6 months - 1 year

1 -2 years

2-3 years

3-4 years

5 years

Longer than 5 years

N/A

2.5) When you were living with NRPF, was there ever a day (ie. from getting up to going to bed) when you did not eat at least one filling meal, due to lack of money (excluding the support of charities/friends/family) ?

Yes

No

2.6) When you were living with NRPF, was there ever a day when your children did not eat at least one filling meal a day due to lack of money?

Yes
No

2.7) When you were living with NRPF were you able to keep your accommodation warm (without the help of family/friends/charities), without cutting back on other essentials?

Yes
No

2.8a) When you were living with NRPF were you able to pay regular bills like electricity, your mobile phone, council tax and water, without cutting back on other essentials? (Without support from family/friends/charities)

Yes
No

2.8b) Were you incurring debt to keep up with paying these bills?

Yes
No

2.9) When you were living with NRPF did you have two pairs of properly fitting shoes, suitable for all weather (e.g. waterproof) shoes (without support from charities/friends/family)?

Yes
No

2.10) If no, why not?

Couldn't afford it
It was too much trouble
It was not something I wanted/needed
Don't know

2.11) When you were living with NRPF did you have a warm waterproof coat (without support from charities/friends/family)?

Yes
No

2.12) If no, why not?

Couldn't afford it
It was too much trouble
It was not something I wanted/needed
Don't know

2.13a) Did you have any children when you had NRPF

Yes
No

2.13b) When you were living with NRPF, did each of your children have two pairs of properly fitting shoes, suitable for all weather (e.g. waterproof) shoes?

Yes
No

2.14) If no, why not?

Couldn't afford it
It was too much trouble
It was not something they wanted/needed
Don't know

2.15) When you were living with NRPF did each of your children have a warm waterproof coat (without support from charities/friends/family)?

Yes
No

2.16) If no, why not?

Couldn't afford it
It was too much trouble
It was not something they wanted/needed
Don't know

2.17) When you were living with NRPF did your children have celebrations on special occasions such as birthdays, Christmas or other religious festivals (without support from charities/family/friends)?

Children had this
Children would have liked to but we could not afford it
Children did not want/need this
N/A

2.18) Have you and your children been provided Section 17 support from Social Services?

Yes
No

2.19) Has your children's education been disrupted as a consequence of NRPF (either through missed days or moving school)?

Yes
No
N/A

Accommodation

3.1) Can you remember how much your rent was (per month) when you had NRPF? (short answer text)

3.1b) If you did not pay rent, do any of these statements apply to you?

Stayed with family/friends where no rent was required
 Friends or family paid for me
 I did work or informal favours in exchange for rent
 I was street homeless
 None of these apply

3.2) How many bedrooms did you have when you were paying this rent? (short answer text)

3.3) Which borough was the accommodation in? (short answer text)

3.4) When you were living with NRPF did you ever fall behind on rent payments?

Yes
 No
 N/A

3.5) You said you had been behind with rent, were you behind two or more times a year (whilst you were living with NRPF)?

Yes
 No
 N/A

3.6) The following statements relate to sleeping arrangements, please say yes if any of these apply to your sleeping arrangements when you were living with NRPF.

You had no choice but to sleep in a room with people who were not family (excluding a partner)
 Your child(ren) had no choice but to sleep in a room with people who were not family
 You had to sleep in a room with your child(ren) of the opposite sex over ten years old
 Your children of opposite sex over ten years old had to sleep in a room together
 You slept on the floor or on a sofa or chair
 Your child(ren) slept on the floor or on a sofa or chair
 You shared a bed with your child(ren) any gender over four years old
 N/A

3.7) The following statements relate to homelessness and eviction, please say yes if any of these applied to you.

You had no choice but to stay with people who did not want you to live with them
 You were asked to leave somewhere you were staying with nowhere else to go
 You had to move around multiple times (whilst living with NRPF) because you could not afford to pay rent
 N/A

Change of Conditions

4.1) How did you find out you could make the Change of Conditions application? (short answer text)

4.1a) How long did it take to get help with the change of conditions (if you received help) after you found out you could make it? (short answer text)

4.2) Have you made more than one Change of Conditions application?

4.3) For each application (if multiple made):

4.3(a) Did you have representation?

Yes
No
N/A

4.3(b) How long did it take to prepare the application? (short answer text)

4.3(c) Once you had submitted the application, how long did it take before you received a decision? (Short answer text)

4.3(d) Was this application (1) accepted or refused?

4.3(e) If refused:

4.3(f) Did you receive legal advice regarding the refusal?

4.3(g) Was the refusal challenged?

4.3(h) Was the challenge successful?

Demographic Information

5. 1) Date of Birth (Short answer text)

5.2) What was your age when you first tried to make the Change of Conditions Application? (Short answer text)

5.3) What is your nationality? (Short answer text)

5.4) What is your ethnicity? (Short answer text)

5.5) What is your gender? (Short answer text)

5.6) Often people who have NRPF have had to suffer in different ways, this can include being in violent relationships. Have you ever experienced domestic violence? This can be defined as physical, sexual, emotional and financial abuse.

Yes
No
Prefer not to say

5.7) Do you or any of your family have any long-standing physical or mental impairment illness or disability? By 'long-standing' I mean anything that has seriously troubled you (or a family member) over a period of at least 12 months.

Yes
No
Prefer not to say

5.8) If yes, which of your family members?

Partner
Child
Me

5.9) What was your relationship status when you first made the change of conditions application?

Married
Single never married or in a civil partnership
Civil Partnership
Divorced
Widowed
Prefer not to say

5.10) Did you have any children when you first made the change of conditions application?

Yes
No
Prefer not to say

5.11) Were any of your children British when you made any/all of your change of conditions applications?

Yes
No
Not sure
Prefer not to say

5.12) Were you pregnant when you first made the Change of Conditions application or had you been pregnant in the previous six months before starting any of your change of conditions applications?

Yes
No
Prefer not to say

5.13) What was your employment status when you made your first Change of Conditions application?

Part time
Full time
Unemployed
Maternity Leave
Sick Leave
Prefer not to say

5.14) If you were employed, were you being paid £10 or more or less than £10.00 p/h?

£10 +
Less than £10

Appendix 4 - What are Public Funds?

Attendance Allowance	Discretionary welfare payments	Local authority housing	Universal credit
Carer's Allowance	Disability living allowance	Local authority homelessness assistance	Working tax credit
Child benefit*	Housing benefit	Personal independence payment	Child tax credit
Income-based employment and support allowance	Severe disablement allowance	Council tax benefit	Income-based job-seeker's allowance
Social fund payment	Council tax reduction	Income support	State pension credit

*Parents of British children may be able to claim child benefit but the rules are complex.

Free School Meals - Eligibility for free school meals for children in Year 3 and above is linked to a parent receiving certain welfare benefits, so a child may not be eligible to claim free school meals if their parent(s) are subject to NRPF

Appendix 5 - Children's Letters

Letter 1 - TD

Monday 23rd July

Dear Sir/Madam,

To whom it may concern,
I am writing to you to complain about my family and I struggles. Basic things my family struggle on:
I don't get pocket money, never get birthday party, struggle to pay for trips and don't even have our own house to be free in - it's so disgusting to share the same bathroom/bathroom with strangers and toilets ~~peep~~ people don't even clean. It is also just a very unfortunate life.
I'm about to move on to secondary and I don't think my parents are going to be able to afford it due to financial problems. My name is [REDACTED] my parents are from [REDACTED] but I was born here and I have a British passport. I was born on [REDACTED] [REDACTED] and I am 11. I live in [REDACTED] [REDACTED] and travel to [REDACTED] to get to school and it normally takes around 1 hour or more; I take the [REDACTED] bus straight there.
Please help my parents take care of me and my siblings so we can have a good future.

Yours Sincerely

[REDACTED]

Letter 2 - AZ

02/07/18

Dear Sir/Madam,

My name [REDACTED] I am 11 years old and I was born on [REDACTED]. I am writing this letter with hope that you will take my words into consideration and help me and my family for the better.

I am happy to say that England is my birth place and I have spent my childhood growing up here. This country has many great traditions, food, sites and amazing culture and I am proud to be a part of it yet over and over again I am made to feel as if I don't belong. Made to feel like a foreigner.

I and my family live in a studio flat, where we share one room. I share a bunk bed with my sister whilst my parents sleep in a small double bed next to us. I and my sister are of different sexes so we shouldn't be sharing a room together in the first place, let alone with our parents! I always feel uncomfortable so I can only imagine how my sister who is older feels. Privacy is something we don't have but nor do we have the room or space to study.

I don't have a place to leave my books or my own table so I can revise independently. I and my sister are constantly fighting over the one table we have and it's unfortunate that in a powerful country like England two children are taking turns in educating themselves. I especially feel sorry for my sister as she has GCSES in the upcoming year and I don't want to see her anymore stressed than she already is.

My mother who suffers from severe depression has also been affected by our situation as she doesn't have her own room to rest in. I am aware that at times I may make quite a bit of noise however I am only a child and should be able to let my imagination flow. Not only do I not have any space to leave my toys but I don't have a place to play with them. My mother always needs the lights turned off, space she can walk up and down in and it's not fair that someone with such an illness should be forced to stay in these terrible conditions.

Letter 2 - AZ

Living in an overcrowded house has made me feel very upset and I always find myself not wanting to come home. I don't like being in this house and staying here has also caused me to be sick. I suffer from asthma as the house is in an awful state and no matter how tidy and clean we keep it the terrible work from the builders will always bring something new in, whether it's dust, ants or even rats!

I feel as if I am losing myself and I fear living here has also affected my mental state as I can't even think properly anymore. Moving to a new suitable home would definitely stitch my family back together and help me be happy again.

I thank you for your time in reading my letter and I hope that you will help me and my family become normal again and make me feel as if I really am a British citizen.

[REDACTED]

Letter 3 - KS

[REDACTED]
[REDACTED]
[REDACTED]
8/10/18

TO WHOM IT MAY CONCERN.

My name is [REDACTED] at [REDACTED] in Croydon.

May I take this opportunity to inform you that, I and my mum were relocated to [REDACTED] in [REDACTED]. But I find it hard to go to school in the morning because the place is too far from my school and I have to wake up 4:30 in the morning in order to reach school on time. It takes us $2\frac{1}{2}$ hours. This makes me so tired and my mum. I find it difficult to concentrate in class as well as doing my homeworks because I always feel sleepy and tired because of the long journey.

I don't want to change to another school because I have been at this school since reception till now (year 6). I will miss my friends [REDACTED], [REDACTED] and the teachers [REDACTED].

I will be very grateful for your assistance.
yours faithfully [REDACTED]

Letter 4 - SD

Monday 23rd July 2018

Dear sir / Madam,

To whom it may concern I am writing to explain the difficulties of my life. Since I was young I didn't have the life of a normal child. My family couldn't afford many things like a house. Right now I am in secondary school year 7. It took very long for my parents to get my uniform due to ~~financial~~ financial problems. I was very scared that I thought I was not going to school. My uniform was bought a few days before school started. In primary I had these same feelings. In year 6 we had a reward trip which cost a lot. My parents were very stressed and didn't know if I would go. All my friends were going but I didn't have my hopes up high. In secondary everyone gets pocket money except me so I can't get anything extra. I don't think it is fair because it has been like this all my life and I feel like it would affect me in the future.

Thank You

Your Sincerely

Letter 5 - KR

TO WHOM THIS MAY CONCERN

Dear Sir/Madam

My name is [REDACTED]. I am 15 years old. Miss [REDACTED] is my mother.

I write this letter with teary eyes and so much pain and Sorrow in my heart. I live with my mum and two younger Siblings [REDACTED] (9 years) and [REDACTED] (7 years). We live in a very poor two bedroom flat. Growing up and becoming a teenager, I've always realized that my mum has been the sole breadwinner of the family. She works 7 days just to raise something for the family's upkeep but she is not able to raise enough. Sometimes we are forced to rely on friends for support. But unfortunately, we cannot depend on them any more since they are also not able to extend any more help to us.

We face with a lot of challenges meeting up with our basic needs such as good food and clothing. Even when we get to have uniforms we have no choice but to wear them till they are really worn out. My family has been going through a massive struggle to survive. Clothing and shoes we get to wear and never new since my mum can't afford new clothes and shoes. She always buys us clothing from a charity shop and this gets to us a lot especially my younger siblings. I really feel my mum's pain and I have developed a great fear that she may suffer depression in the near future. I am terrified that

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Something bad might happen to her. My mum struggles to pay rent of £600 every month. She usually has to borrow money to fund our rent. Sometimes she's left with no choice than to beg for money from her colleagues. But now, we can't afford to pay it anymore. My mum upon informing the landlord the situation at hand was given an evacuation letter to move by ending of October. Mum has managed to pay September rent by keen means and we don't know how we would pay rent at the end of October. We are almost homeless. People who tend to help us with little have given up on us. If we should evacuate from here we don't have anywhere else to stay and by the end of October we would be totally homeless if we fail to pay rent. This would be very bad situation for us the kids.

I therefore plead with all humility if you could withdraw the condition of "No recourse to public fund" to enable us to claim government benefits to take care of the family. Please hear our cry and come to our need for the sake of us and the children ~~and not even~~

I pray my request is granted.
Thank you

Yours Faithfully

