

# SAFEGUARDING CHILDREN FROM DESTITUTION: LOCAL AUTHORITY RESPONSES TO FAMILIES WITH 'NO RECOURSE TO PUBLIC FUNDS'



## Executive Summary

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This report explores a tension between two areas of policy concerning the welfare of children: between a requirement in immigration law that some families be excluded from welfare benefits ('no recourse to public funds', or 'NRPF') and a provision in the Children Act 1989 (s17) that requires local authorities to safeguard and promote the welfare of any child 'in need'. It sets out the findings of an 18 month study which investigated the challenges to which that tension can give rise, for local authorities and for the children and families concerned.

The study set out, first, to establish who comprise the families seeking support, the factors that lead them to approach local authorities and the welfare needs they present. It explored their experiences of engaging with local authorities and the outcomes, including the ways in which support is provided for those who receive it. The study sought to establish the practices of local authority Children's Services departments administering s17 in relation to their assessments of need and provision of services. It explored the variation in practice between authorities, their relationship with advocates in the voluntary sector, and the implications of the Home Office's role for their capacity to resolve s17 cases.

### Method

Survey of the 174 Children's Services departments in England and Wales. 137 (79%) responded and 24 to a second detailed survey sent to a sample of them

Survey of voluntary sector support agencies, securing 105 responses

8 local authority research sites

92 interviews with local authority service providers, parents, voluntary sector advocates and solicitors

Fieldwork conducted between January and June 2014

### Key Points

- The Children Act 1989 (Section 17) requires local authorities to safeguard and promote the welfare of children 'in need', within their families, including a child whose parents have 'no recourse to public funds' (NRPF).
- A child is 'in need' if unlikely to achieve or maintain a reasonable standard of health or physical, intellectual, emotional, social or behavioural development, or is disabled. A destitute child is a child in need for the purposes of s17.
- In assessing NRPF families' eligibility for s17 support, some local authorities gave primacy to the needs of the child, others greater weight to the immigration status and credibility of the parents.
- In 2012/13, an estimated 3,391 NRPF families were supported by local authorities under s17, including 5,900 children, a 19% rise on the previous year, at an estimated total cost of £28m. 61% of the families were in London.
- Prior to receiving this support, families were destitute, seeking shelter, food and warmth. Some had experienced exploitative relationships and domestic violence.
- Local authorities provided accommodation in B&Bs and in the private rented sector, sometimes in poor conditions unsuitable for children. Subsistence payments were very low; below the statutory levels set for any other group of people including refused asylum seekers.
- The immigration profile of the families was diverse: of the families in 24 authorities surveyed, 11% held visas, 8% were mobile EU citizens and 63% were visa overstayers. 23% of the families had at least one child who is a British citizen. A high proportion (71%) had pending applications to remain in the UK.
- Long delays in resolving the immigration applications of supported NRPF families is a concern for local authorities. The vast majority of families are found to be entitled to remain in the UK.
- While central government determines who may access mainstream welfare benefits, it is local government that provides a safety net for some children whose parents have been excluded.



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## Complex legal provisions

Exclusion from welfare benefits arises when an individual has, as a condition of their immigration status, 'no recourse to public funds' (NRPF). NRPF applies to most adults who come to the UK from outside of the European Economic Area (EEA) including those coming to work or study, as visitors or to join family members, and those who have overstayed their visa. Those from outside the EEA who are primary carers of British children have the right to live and work in the UK but are subject to NRPF. In 2012, the NRPF policy was extended to people granted Limited Leave to Remain (LLR) under certain immigration routes.

Mobile EU citizens do not have NRPF but have restricted access to welfare benefits. If they become destitute they can become eligible for s17 support. Asylum seekers and refused asylum seekers have NRPF but where eligible for accommodation and financial support it is directly administered by the Home Office.

Those subject to NRPF are not excluded from s17 support because s17 does not fall within the definition of 'public funds'.

The responsibility of local authorities under s17 is to meet the needs of children within their families. A level of support therefore necessarily extends to their parents.

In 2002, government sought to restrict access to s17 by excluding four categories of people: nationals of EEA countries, people with refugee status granted in other EEA countries, refused asylum seekers that have failed to cooperate with removal directions and people unlawfully in the UK. However, local authorities could not refuse s17 support if this would breach their rights under the European Convention on Human Rights (ECHR). There is no breach of human rights if there is no legal or practical obstacle for the family to return to the parent's country of origin (unless on return the child would be 'in need' or the ECHR rights of any family member infringed). If the family could return to their country of origin but in practice do not and the child remains 'in need', the authority's s17 duty is still likely to apply.

## Implications for local authorities

Local authorities have seen a rise in the number and diversity of NRPF families receiving long-term support under s17 (19% in the year to 2012/2013) because of the increasing use of the NRPF policy, increased restrictions on mobile EU citizens accessing welfare benefits, and the impact of the recession on destitution.

S17 effectively creates a parallel welfare system for those families subject to NRPF who become destitute; a system administered and funded by local authorities. While central government determines who may access mainstream welfare benefits, local government provides a safety net for children whose parents have been excluded.

Local authorities have a responsibility to provide s17 support throughout the period that families await the outcome if they remain destitute. Powers to resolve immigration claims through

removal from the UK or granting permission to stay rest with the Home Office.

Despite the complexity of the law, the statutory guidance on s17 assessments and service provision does not cover the particular considerations relating to these cases, including the implications of the family's evolving immigration status, assessments of destitution and feasibility of return to their country of origin.

## Families and their welfare needs

Our survey of local authorities, for which 137 provided data, shows that they were providing 2,679 NRPF families with accommodation and/or subsistence support under s17 (2012/13). We extrapolate the total number of supported families across England and Wales to be 3,391, including 5,900 children, and the total cost of support provided to be £28m. Families were clustered unevenly across the UK in a relatively small number of urban authorities. 61% were in London.

In the 24 authorities included in the second survey, 29% of s17 service users had a current visa, were mobile EU citizens or had

been granted Limited Leave to Remain with NRPF under certain immigration routes. 63% had remained in the UK after their visa expired. Jamaican and Nigerian nationals made up 51% of cases, with significant but smaller numbers from Ghana and Pakistan. 23% of families had at least one British child. 71% of supported families had immigration applications pending.

Interviews identified the welfare needs of children at the point of referral to the local authority as overwhelmingly for accommodation, followed by food, clothing and warmth. Parenting issues did not emerge as a concern. Only 2.2% of the children were subject to a child protection plan.

## From self-sufficiency to crisis

An approach to the local authority usually followed a period of stability and self-sufficiency related to the initial reason for coming to the UK: study, work or visit/live with family. Many reported being integrated into their local communities through work, place of worship, their children's school, other statutory services and/or volunteering. Contributory factors to their deterioration of circumstances included a decline in formal and informal work opportunities, relationship breakdown, increasingly stringent immigration requirements facing employers, refusal of a visa application or administrative delay in the handling of their case.

The situation of destitution had sometimes led to exploitative relationships; for some mothers, because of reliance on men for accommodation. Some parents

were engaging in informal work which entailed risks, including sex work. Domestic violence was an element in many referrals. For children, these were reported to be precarious and unpredictable situations, with families moving from place to place. When the support of friends, communities or faith organisations was exhausted a crisis followed, leading eventually to referral to the local authority. Referral was often by statutory services such as schools and health visitors and to a lesser extent by voluntary sector agencies.

**'Children are children at the end of the day, they are not part of the cause of the circumstances where that family is.... If you develop a policy or strategy of punishing the adults because of the decision they've made, the children are in the middle, they are in the centre of it and they are going to be the ones that suffer'** Deputy Team Manager, Local Authority

**'When a family presents at children's services, it's about trying to establish whether or not the family is genuinely destitute and...has given us the true picture of the situation. Are they working illegally but not saying? Are they getting money from friends and family but they're not saying? There's not a child centred approach towards a Section 17 assessment. It's all about the presenting parent; it's not about the child.'** Family Support Worker, Local Authority

Parents were reluctant to return to their country of origin. Most had lived in the UK for a long time and, if not already legally resident, had submitted applications to remain. Mobile EU citizens were looking for work or awaiting the outcome of welfare benefit claims. The most common reasons given for wanting to stay related to children: their education, future in the UK and contact with separated fathers. Many children knew little about their country of origin and there was little there for the family to return to. A minority feared for their safety should they return.

## Local authority practices

In most authorities, our survey shows that handling of NRPF cases is mainstreamed within the caseload of 'child in need' cases in Children's Services departments. A minority of authorities have dedicated NRPF teams or an NRPF worker.

The assessment process is in stages: screening and statutory assessment. We found reluctance in some authorities to engage in a statutory assessment, seeking the closure of cases at screening stage. They report that once they engage in the statutory assessment it is difficult to demonstrate that they have no s17 duty to the family. Reasons given to advocates for rejection at screening stage, corroborated in some cases by local authority interviewees, suggest that some decisions to deny support to a child may be being made without the evidence that could only be provided through the statutory assessment process.

In carrying out assessments, the considerations that local authorities take into account are consistent. The way in which they weigh up considerations and use evidence to reach conclusions differ. While some authorities gave primacy to the needs of the child, others give greater weight to the immigration status and credibility of the parent in determining children and families' eligibility for support.

## Parents' experiences of the assessment process

Some parents felt that in the assessment process, social workers had treated them with respect and understanding. Others reported negative experiences, even when it resulted in services being provided. Some were told to resolve their situation by returning to abusive partners or to their country of origin, despite having pending applications to remain in the UK. Some reported feeling scared, upset, stressed, judged and disbelieved, and feared that their children would be taken from them. Few local authority interviewees considered taking children into care to be a legitimate consideration at any stage. Advocate and parent interviewees said such 'threats' are often made.

## Provision of support

Many parents were grateful for the support they received and felt it had substantially improved the lives of their children.

Families nevertheless experienced difficulties in relation to the accommodation and/or subsistence payments provided. Some authorities provided accommodation in Bed and Breakfast (B&Bs) which parents found cramped (some sharing beds with their children), isolated, dirty and with insufficient facilities to

cook. Some families were placed there with drug users and those recently released from prison. Local authorities agreed B&B accommodation was often inappropriate, inadequate and expensive.

**'At the end of the day, when they eventually decided to come to our rescue, things became good, our son became, his development became, rapid.'** *Parent*

Private rented accommodation was more appropriate, providing the means to cook fresh food and make better use of subsistence payments. Local authorities with NRPF teams were more likely to use it, and could negotiate better rates with landlords. Lack of available accommodation led inner London authorities to accommodate families in outer London boroughs. Outer London boroughs dispersed families as far as Yorkshire and the West Midlands. In some cases, parents were given a bus ticket, met by a landlord and had limited further contact with the original authority.

Subsistence payments varied considerably but in all cases were well below welfare benefit rates, below Home Office Section 95 support for destitute asylum seekers and its Section 4 'hard case' support rates. One authority provided £23.30 per child per week and nothing for parents: for a family with two parents and one child, a little over £1 per person per day. Some authorities provided £35 per person (adult and child) per week; another provided £47 per family per week if they had three or fewer children.

Families expressed difficulties meeting their children's needs, particularly providing enough food. Transport, clothing and nappies were also difficult to afford. Lack of eligibility for free school meals was a concern.

## Explaining variations in practice between local authorities

We identified three factors that contribute to variations in practices: the strength of local advocates; deployment of a dedicated NRPF team; and the way in which these issues are perceived by the staff concerned.

Provision of advocacy support from the voluntary sector is more available in some areas than others. Within the sector we found high levels of expertise and commitment to helping families but elsewhere low capacity and understanding of this complex area of law. Some authorities had never received a legal challenge whilst others were in regular contact with advocates. Gaps in capacity may reflect the differing mandates and funding of parts of the voluntary sector.

Local authorities with dedicated NRPF teams were more internally consistent in their approach, their expertise greater and the referral process more efficient. Nevertheless, there were inconsistencies between them in assessment and support practices.

A further factor is differing perspectives voiced by staff in Children's Services departments on the relative deservingness of this group of parents, in particular what was felt to be their poor immigration decisions, this being the context in which exclusions from services were felt to be appropriate. Other staff were more likely to focus on the needs of the child, independently of their views on the merit of decisions parents had made.

## Case resolution and outcomes

For those families with pending applications to remain in the UK, local authorities are reliant on the Home Office to resolve their case: resolution that may result in removal from the UK or grant of a legal status that no longer necessitates the family's reliance on s17 support. In the majority of cases families are found eligible to remain in the UK.

Our second survey of 24 authorities (supporting 878 families) found that 30% of cases are provided with support for less than six months. More than a third receive support for between one and three years and 7.3% for more than three years.

Each application to remain requires attention by a Home Office case officer to its particular, often complex, circumstances. The evidence provided with the application has to be checked, and a refusal may be challenged in court or followed by a new application. Interview evidence suggests there are also problems in the administration of cases which are causing unnecessary delays. For parents and children it is a period of insecurity and hardship. Lack of face-to-face contact with a case officer compounds communication difficulties and misunderstandings.

Local authority staff referred to effective working relationships with Home Office staff in the past but poor communication in recent years: lack of a named contact, lack of responses by phone or email and no regular meetings to maintain communication. The impact of NRPF Connect, a newly coordinated database of cases intended to facilitate communication between local authorities and the Home Office and resolution of cases may contribute to addressing these issues.

## Conclusions

The Children Act provides a safety net for children whose parents have no recourse to public funds (NRPF) and who are facing safeguarding risks through destitution or dependency on exploitative relationships. Children's Services departments offer a low level of material support but nevertheless provide a lifeline for those children and their families.

In contrast to provision for destitute families in the asylum system, funded by the Home Office, local authorities must meet their accommodation and subsistence duties under s17 to NRPF families as part of their broader s17 duties without funding from central government to account for this specific cost. The slow rate of case resolution where applications to remain are pending colours the whole process for local authorities as any support provided will need to be continued throughout the process of resolving the family's immigration status, contributing to the difficulty which families have in securing the support they request.

We do not know the implications for those children whose families are denied support. Some children, in receipt of s17 support, face long periods in basic living conditions and survival on subsistence rates below those deemed minimal for any other category of people in the UK, raising concern on the long-term impact on such children of living in poverty. This leads us to question whether the fundamental aim of the Act – to safeguard children in need – is consistently being met.

Local authorities are caught between that duty to safeguard children and their inability to resolve the underlying cause of the child's destitution. It is the length of time for which local authorities have to provide support, the inadequate level of support provided, the communication difficulties between the two tiers of government responsible for these families and the need to resolve the cases of those who have not or cannot be removed, that need to be addressed. In its operation, this is a dysfunctional system in which children are the ultimate losers.

Advocates and service providers in the voluntary sector are playing a key role in providing material support to NRPF families and in their advocacy for destitute children. There are nevertheless gaps in the geography of this support and in levels of expertise which those managing and funding voluntary sector organisations in the children and migration sectors may want to address.

## Implications for policy and practice

- Our findings should be taken into account in any review of the extent to which the NRPF restriction is used, recognising the implications for children in the small minority of families that become destitute and the financial consequences for local authorities.
- The impact on the public purse could be addressed by reducing the time taken to resolve cases, and on local authority budgets by targeted grant-funding from central government, based on an agreed set of criteria and definition of destitution.
- Delays in case resolution could be addressed through extended membership by local authorities of NRPF Connect which provides a means to strengthen working relations between the responsible staff in local authorities and the Home Office respectively.
- Ways in which local authorities could contribute to the voluntary return of families whose application to stay is rejected could be considered, including raising awareness among families of the availability of assistance with return and eligibility criteria that apply.
- Local Safeguarding Children Boards should consider the particular situation of destitute children in NRPF families and ways in which statutory agencies and the voluntary sector can work together to address the safeguarding risks they present.
- The statutory guidance on s17 assessments should be revised to address the particular issues that arise in assessing eligibility for s17 support in NRPF cases, coupled with training of social workers and case workers on the law and procedures. The guidance should cover minimum acceptable rates for subsistence, or set a rate linked to an existing benefit level, taking into account the cost of meeting a child's needs.
- Authorities could consider the efficiency of demarcating a dedicated NRPF team or social worker as a focal point of expertise and for referral from other agencies.
- Lack of capacity in the voluntary sector to provide advice and support could be addressed through joint working across the sector; through funding bodies identifying whether their funding criteria unintentionally excludes this group; and through greater availability of information and training on this complex intersection of immigration and child welfare legislation.

