

LOCKED OUT OF A LIVELIHOOD: THE CASE FOR REFORMING 'NO RECOURSE TO PUBLIC FUNDS'

Marley Morris and Amreen Qureshi

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EXECUTIVE SUMMARY

Many people in the immigration system have 'no recourse to public funds' (NRPF), which means they are prohibited from accessing mainstream benefits. People without immigration status, people with the NRPF condition attached to their visa, and people granted leave on condition of a 'maintenance undertaking' (ie a written maintenance commitment from a sponsor) are all subject to NRPF. This prevents them from accessing a range of government support measures, including universal credit, social housing, and homelessness assistance.

There are approximately 1.3 million people with valid leave to remain with the NRPF condition attached. Most are on either study or work visas and were recently granted their initial visa. However, the NRPF condition also affects people who have been in the UK's immigration system for longer periods. There are approximately 56,000 people whose initial visa was granted in 2010 or earlier and who are now on forms of leave likely to be subject to NRPF – most of them on family visas.

There is considerable evidence to suggest that the NRPF condition has contributed to destitution and financial hardship across the UK. Research on the experience of NRPF by families and children has highlighted that benefit

restrictions have left many experiencing poverty, homelessness, sub-standard accommodation, severe debt, and other financial difficulties. Evidence also points towards the disproportionate impact of NRPF on those from ethnic minority backgrounds: a study by Citizens Advice found that more than 80 per cent of their clients who sought advice on NRPF and non-EU migrants' access to benefits were from ethnic minority backgrounds.

The government argues that the NRPF condition is necessary to ensure that migrants are not a burden on the taxpayer and that they integrate into society. Yet the current NRPF policy risks undermining integration and placing serious pressures on local authority budgets. While the NRPF policy may have reduced the direct welfare costs for central government, some of these costs have been passed to local government, because they have a statutory duty to assist people with NRPF in certain circumstances (eg where there are children in need or adults with care needs). Moreover, the impacts of the policy on financial precarity and destitution risk hindering individuals' efforts to integrate into their communities.

Covid-19 is expected to have a disproportionate impact on people with NRPF. Frontline services have suggested that people with NRPF have faced particular challenges in the past year, with Citizen Advice reporting that there was a 110 per cent year-on-year increase in the number of issues relating to NRPF raised by clients in spring 2020. While individuals with NRPF were in some cases eligible for the government's emergency support measures (such as the job retention scheme), many still fell through the cracks.

There are ways for people to lift their NRPF conditions, but they are limited in scope and complex to navigate. Currently there are two main ways the conditions can be lifted: the 'change of conditions' process, generally for those who are destitute or who face other severe financial difficulties, and the destitution domestic violence (DDV) concession, for those whose relationships break down due to domestic violence and who are in need of support. Use of the DDV concession has risen over the past five years, and there was a surge in 'change of conditions' applications at the onset of the pandemic. But these options are only available to individuals on certain visa types and can be challenging to access without legal advice.

The government is looking to expand NRPF to include further cohorts of people. Under the proposed nationality and borders bill, the NRPF condition could be extended to 'group two' refugees, including those who have not come to the UK 'directly' from a country or territory where their life or freedom was

threatened, those who have not presented themselves without delay to the UK authorities, and those who have come to the UK unlawfully without good cause.

Under current government policy, the 'no recourse to public funds' condition has put children and families at higher risk of poverty, further entrenched racial disparities, placed local government under greater financial pressure, and contributed to a surge in destitution during the pandemic. It is therefore in clear need of reform. Recognising that the broad contours of the policy are likely to stay in place in the short- to medium-term, we set out three proposals to mitigate its potential harms:

1. **Redefining the definition of 'public funds':** the government should review the list of public funds and consult on how it could be amended. It should in particular consider removing benefits intended to support children (such as child benefit) from the 'public funds' category and ensure that all children of families with NRPF can access free school meals.
2. **Easing pathways for the NRPF condition to be lifted:** the government should extend the change of conditions process and DDV concession to all people with leave to remain with NRPF. It should also conduct a review of the change of conditions policy, with the aim of simplifying and streamlining the application process.
3. **Helping local government to support people with NRPF:** the government should support local authorities with large NRPF populations through direct and targeted funding. Alongside additional resourcing, central government should provide greater clarity on the legal powers and duties that councils have to support those with NRPF.

Finally, aside from these three reform proposals, **we recommend against the government's plans to extend the NRPF condition to some refugees**, including those refugees who have not come directly to the UK. This cohort by definition is highly vulnerable. People who come to the UK to seek asylum are more likely to be on lower incomes and have long-term health conditions. Without a social safety net, this cohort of refugees is at high risk of poverty and destitution. This could place additional pressures on local authorities and emergency services. **We therefore advise that rights to public funds are retained for all refugees, regardless of the route they took to come to the UK.**

INTRODUCTION

Many people in the UK immigration system are subject to the 'no recourse to public funds' (NRPF) condition, which means that they are unable to access mainstream welfare benefits. This includes most benefits, tax credits and housing assistance provided by the government. As a result, several cohorts within the UK population are at a serious risk of becoming destitute. This includes people on short-term visas, those without legal permission to be in the UK, as well as those who have been in the UK for extended periods but are on long routes to settlement.

The NRPF condition has become a subject of considerable controversy in recent years. The widespread job losses since the onset of the pandemic – combined with strict social distancing rules and travel restrictions – meant that many people subject to NRPF lost their income and yet were shut out of key government support measures. The limited nature of this social safety net meant that others were left with little option but to continue working to protect their livelihoods, in spite of the risks to their health. As a result, calls to suspend or abolish the policy have intensified in the wake of the pandemic.

The government now plans to extend the NRPF condition to further cohorts of people in the immigration system. At the time of writing, the nationality and borders bill has been introduced in parliament and has completed its second reading. The bill will implement many of the measures outlined in the government's 'new plan for immigration'. This plan intends to apply the NRPF condition to refugees who do not come to the UK directly, as part of efforts to deter individuals from arriving through unauthorised routes (Home Office 2021a).

This briefing will provide an overview of the NRPF policy and how it impacts the everyday lives of people who are subject to immigration control. It will also explore the potential impacts of the proposed extension of the NRPF condition in the nationality and borders bill. Based on this analysis, the briefing paper will put forward a set of reforms to the current system to address some of the most adverse impacts of the current system. Our findings and recommendations are informed by secondary research, data analysis, and a policy workshop held in April 2021, which invited experts across the migrants' rights sector and local government to discuss the impacts of NRPF and the options for reforming the policy.

NO RECOURSE TO PUBLIC FUNDS – AN OVERVIEW OF CURRENT POLICY

What is NRPF?

Under the UK's immigration system, many people are subject to the 'no recourse to public funds' (NRPF) condition. This means they are barred from accessing mainstream benefits because of their immigration status. People subject to the NRPF condition will be turned away if they try to approach the authorities to access public funds and, where they are found to have accessed public funds in breach of their conditions, they risk jeopardising their future status in the UK.

The main rules governing NRPF are set out in section 115 of the Immigration and Asylum Act 1999. The act states that people 'subject to immigration control' are excluded from a range of benefits (Immigration and Asylum Act 1999). Those subject to immigration control include three main groups:

1. People who require leave to remain but do not have it – ie those living in the UK without permission (sometimes described as 'irregular' or 'unauthorised' migrants).
2. People with the NRPF condition explicitly attached to their leave – ie in general people with limited leave to remain (eg a time-limited work, study, or family visa).
3. People granted leave on the condition of a 'maintenance undertaking' – ie a written commitment from a sponsor stating that they are responsible for the individual's maintenance and accommodation.

People with NRPF are by definition unable to access public funds. These comprise a range of benefits and other forms of support, including (but not limited to) universal credit, attendance allowance, carer's allowance, child benefit, council tax benefit, council tax reduction, disability living allowance, local welfare funds, personal independence payment, severe disablement allowance, and state pension credit (Home Office 2021a). People with NRPF are also prohibited from accessing housing accommodation and homelessness assistance (ibid). The NRPF condition therefore largely excludes individuals from the UK's social safety net.

There are some forms of support which are not defined as 'public funds' and so which may still be available for people with NRPF. This includes retirement

pension, statutory sickness pay, and contributory benefits such as contribution-based jobseeker's allowance and contribution-based employment and support allowance. Primary and secondary education and NHS treatment are also not designated as public funds, though there are separate barriers in place for migrants seeking secondary healthcare (ie hospital treatment). In addition, where people with NRPF are in 'mixed households' with others who do not have NRPF, they may in some cases be able to be included as part of a benefit claim. Finally, some of the government measures in place during the pandemic – including the job retention scheme (furlough) – are not classified as public funds and are available for people with leave with the NRPF condition attached, though they may not always be easily accessible for those with a non-standard employment status (NRPF Network 2021).

Why does the government impose the NRPF condition?

The Home Office's justification for imposing NRPF on migrants is two-fold. The department's position is that it is in the interest of the UK for migrants to be "financially independent" for two main reasons: to not be a burden on the taxpayer and to ensure that they integrate into society (Home Office 2020a). According to the government's logic, by admitting only those who will not need to make use of the welfare system, this will ensure that those who come make a net fiscal contribution and successfully settle into the UK.

The NRPF policy is also intrinsically linked to the Home Office's wider 'hostile environment' architecture. As IPPR's previous work on the hostile environment has detailed, this approach aims to encourage people without immigration status to leave the UK of their own accord by restricting access to basic necessities (Qureshi et al 2020). By preventing people without permission to be in the UK from claiming benefits, the Home Office considers this a potential means of deterring people from breaching immigration rules (Home Office 2020b).

The government has continued its support for the NRPF policy throughout the course of the pandemic. In May 2020, after being asked about the policy by work and pensions committee chair Stephen Timms, the prime minister said he would look into ways to support people who needed help as a result of NRPF (Liaison Committee 2020). However, the prime minister subsequently rejected calls to temporarily suspend NRPF, on the basis that "it's a very longstanding provision in this country that NRPF conditions should apply to those for instance who are here illegally or unlawfully" (Bulman 2021). The Home Office also argued that other steps had been taken to address the risks of destitution, such as the introduction of the jobs retention scheme, which could be accessed by people who have leave to remain with the NRPF condition (ibid).

Who has NRPF?

As discussed earlier in this chapter, there are three main cohorts of people with NRPF: people without immigration status, people with NRPF attached to their leave, and people granted leave on condition of a 'maintenance undertaking'.

Measuring the size and characteristics of people without status is extremely challenging. There is no reliable assessment of the number of people without status: estimates tend to vary widely, often because they are based on differing methodologies (Walsh 2020). One of the most recent studies was commissioned by the GLA and estimated that the total undocumented population in the UK was around 674,000, including just under 400,000 in London alone, but methodological limitations make it hard to be certain about the accuracy of this figure (GLA 2020).¹ There are also no known available estimates of the number of people granted leave with a 'maintenance undertaking', though we expect that this is a relatively small proportion of the total number of people with NRPF.

We therefore focus most of our analysis in this section on people with NRPF attached to their leave. Again, there is no official figure of the size of this cohort. However, Home Office administrative data can help to provide an estimate (based on the approach used in Migration Observatory 2020). According to the Home Office's Migrant Journey statistics, the number of people at the end of 2020 with valid leave to remain other than settlement who were granted an initial visa from 2004 onwards was around 1.31 million (excluding those on EEA family permits). Given most people with valid leave to remain other than settlement have NRPF attached to their visa, this indicates that there were around 1.31 million people in 2020 who had NRPF as a condition of their leave (Home Office 2021c). It should be noted that this is only an approximation of the number of people with NRPF and some people with valid leave to remain may not be physically present in the UK (see footnote for details of the methodological limitations).²

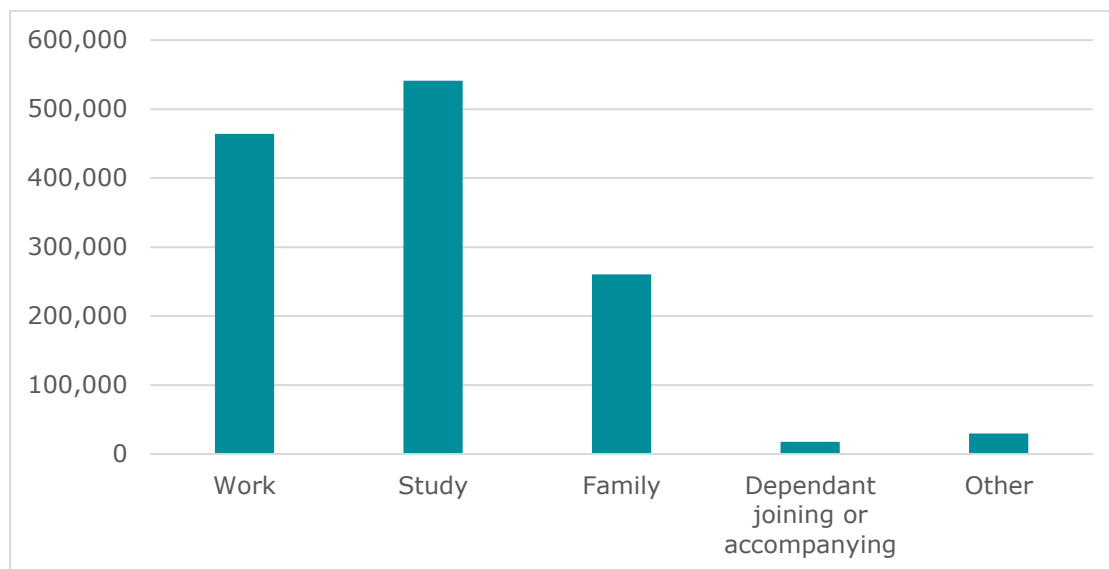
¹ This figure excludes children born in the UK to people who are undocumented.

² These statistics only refer to an individual's immigration status rather than their country of residency; it is not possible to determine whether or not someone with valid leave to remain is still in the UK. It is therefore possible that some people with valid leave to remain may no longer be living in the UK (for instance, because they have moved abroad as a result of the pandemic). Moreover, some people with limited leave to remain may not have the NRPF condition attached; for instance, it could have been lifted through a 'change of conditions' application, as discussed below.

According to the Migrant Journey statistics, the majority of people with NRPF attached to their leave are on temporary study and work visas (see figure 2.1). This is to be expected given these are the most common types of entry clearance visas issued (excluding visitor visas) (Home Office 2021d).

Figure 2.1: Most people with NRPF attached to their leave are either on study or work visas

End of year category for applicants with valid leave to remain other than settlement at end of 2020 (including all applicants issued an initial visa from 2004 onwards)



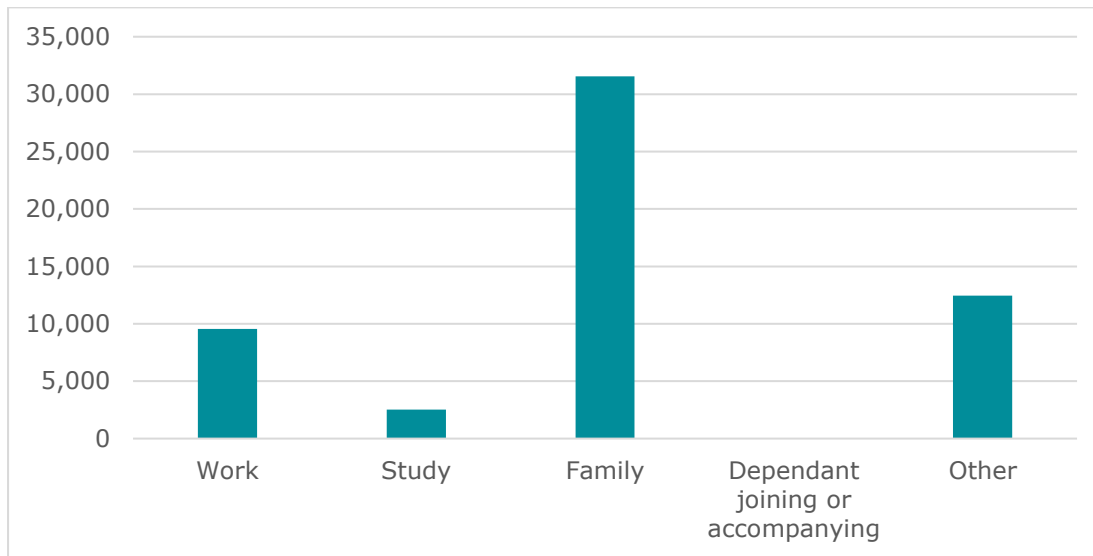
Source: IPPR analysis of Home Office (2021c)

Note: It is not possible to tell from these statistics whether the individual is currently in the UK. Excludes people on EEA family permits.

However, the statistics also indicate that there are significant numbers of people who were granted their initial visa a long time ago and yet are still likely to have the NRPF condition attached to their leave. Approximately 56,000 people whose initial visa was granted between 2004 and 2010 were still on temporary forms of leave at the end of 2020 (ie those likely to be subject to the NRPF condition). In contrast to the overall NRPF population, most of this cohort were categorised as on family or 'other' visa types, rather than study or work visas (see figure 2.2).

Figure 2.2: Most people with NRPF attached to their leave whose first visa was issued in 2010 or earlier are on family or 'other' visa types

End of year category for applicants with valid leave to remain other than settlement at end of 2020 (including all applicants issued an initial visa from 2004 to 2010)



Source: IPPR analysis of Home Office (2021c)

Note: It is not possible to tell from these statistics whether the individual is currently in the UK. Excludes people on EEA family permits.

This analysis therefore suggests that there are tens of thousands of people who were originally granted a visa at least a decade ago who still have the NRPf condition attached to their leave.

One important cohort of people who have lived in the UK for a long period and are subject to the NRPf condition are those on the '10-year route' to settlement. This route is for people who are granted leave to remain on human rights grounds – in particular, Article 8 of the European Convention on Human Rights (ECHR). Applicants to the 10-year route can include (Home Office 2021e):

1. People who apply for a parent visa from within the UK without meeting certain eligibility criteria to enter onto the standard five-year route (eg they do not meet the financial, accommodation, or immigration status requirement), but where they have a parental relationship with a child who is a British citizen or long-term resident and, taking into account the best interests of the child, it would not be reasonable to expect the child to leave the UK.
2. People who apply for a partner visa from within the UK without meeting certain eligibility criteria to enter onto the standard five-year route, but where they have a relationship with a partner who is a British citizen or permanent resident (or has refugee or humanitarian protection) and there

are 'insurmountable obstacles' to family life with the partner were they to leave the UK.

3. People who apply on the basis of their 'private life' because they have already lived in the UK for a long period, even where they may not have had legal permission (including (i) children who have lived in the UK continuously for at least seven years and for whom it would be unreasonable to be expected to leave, (ii) young people aged between 18 and 24 who have lived continuously in the UK for at least half their life, (iii) people who have lived in the UK continuously for at least 20 years, and (iv) adults who have lived in the UK for less but where there would be very significant obstacles to their integration into the country where they would otherwise have to go).

The route generally offers temporary leave to remain in two and a half year intervals subject to the NRPF condition. After 10 years, individuals are able to secure indefinite leave to remain and full access to public funds. According to analysis of Home Office data by the Migration Observatory, there were an estimated 170,000 people on the family or private life 10-year routes by the end of March 2021 (McKinney and Sumption 2021).

The analysis in this section suggests that, while the majority of people with NRPF are those issued initial visas recently – typically, those on study and work routes – there are nevertheless a significant number of residents who have spent many years in the immigration system without being able to access mainstream benefits. The policy therefore does not just apply to recent arrivals.

What are the impacts of NRPF?

There is wide-ranging evidence of the impacts of the NRPF condition on individuals and families. Qualitative research involving people with NRPF has described their experiences of financial hardship, including food insecurity, struggles with childcare costs, and inadequate and unsafe accommodation (Odumade and Graham 2019; Dickson 2019). Research participants with NRPF have also highlighted their wariness in engaging with government services over concerns that this could impact their future status in the UK (Odumade and Graham 2019).

Recent research suggests that people on the 10-year route face significant barriers as a result of their NRPF condition. This cohort is expected to be particularly vulnerable because they are generally unable to meet the eligibility criteria for shorter routes to settlement (Manning 2020). A study by the

Children's Society of families and children on the 10-year route found that restrictions on accessing public funds had left many experiencing poverty, homelessness, sub-standard accommodation, severe debt, and other financial difficulties (Pinter et al 2020).

There is also evidence to suggest that the NRPF policy disproportionately impacts women and people from ethnic minority backgrounds. A study by Citizens Advice (2020) found that in the year ending 1 May 2020, 82 per cent of their clients who sought advice on NRPF and non-EU migrant's access to benefits were from ethnic minority backgrounds. Around a third were Asian, around a third were black, and around a fifth were from a different ethnic minority background.

With respect to the impacts by gender, data from the Home Office suggest that women are more likely to seek to lift their NRPF condition as a result of destitution (see below). Moreover, concerns have been raised about the disproportionate impacts on women due to the policy placing barriers on access to government funded childcare (Woolley 2019). Finally, the NRPF condition restricts access to support for victims of domestic abuse, making it harder to seek help (McIlwaine et al 2019). A report by Women's Aid found that only 4 per cent of refuge vacancies listed on the online database Routes to Support could be taken up by those with NRPF, and even in these cases women may not be accepted unless there is a separate funding arrangement in place (Women's Aid 2020).

How can people with NRPF access support?

While people with the NRPF condition are generally ineligible for mainstream benefits, there are three main ways in which they can access government support. They may be able to lift their conditions; they may be eligible for asylum support; or they may be able to get support from their local authority.

Lifting the NRPF condition

People granted leave on human rights grounds under the '10-year' partner, parent, or private life route can apply to lift their NRPF condition by making a 'change of conditions' application. In order to qualify for a change of conditions, an applicant must either be destitute or at imminent risk of destitution; there must be compelling reasons related to the welfare of their child as a result of

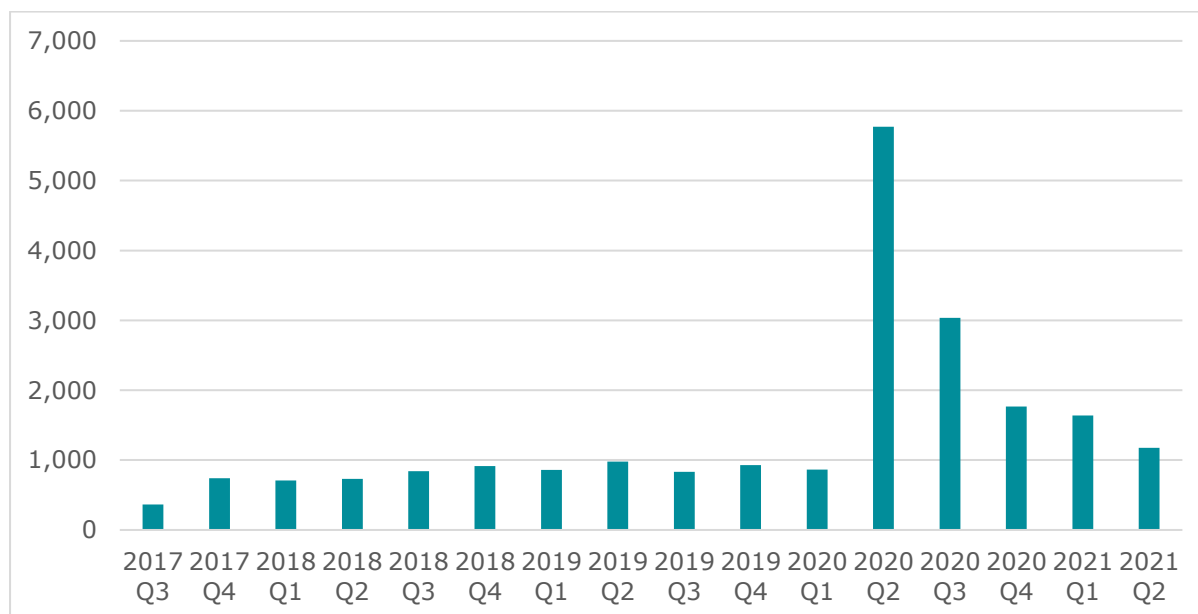
their very low income; or there must be exceptional financial circumstances (Home Office 2021f).

People on the 'five-year' partner or parent route may also apply for a change of conditions, but if they are successful, they will generally be switched onto the 10-year route. This means they will have to wait twice as long to secure permanent residence (ibid).

There has been a surge in the number of change of conditions applications over the past year, which is likely to be a result of the Covid-19 pandemic (see figure 2.3). Acceptance rates also rose over the past couple of years, though have fallen back in recent quarters (they now stand at 69 per cent). Applicants tend to be young and female: 59 per cent of applications in 2020 were from women and around a quarter were under 18. The most common nationalities of applications in 2020 were Nigeria, Pakistan, India, Bangladesh and Ghana; in total these nationalities made up nearly three quarters of all applications (Home Office 2021g).³

Figure 2.3: There was a surge in 'change of conditions' applications after the onset of the pandemic

Change of conditions applications received by quarter



Source: IPPR analysis of Home Office (2021g)

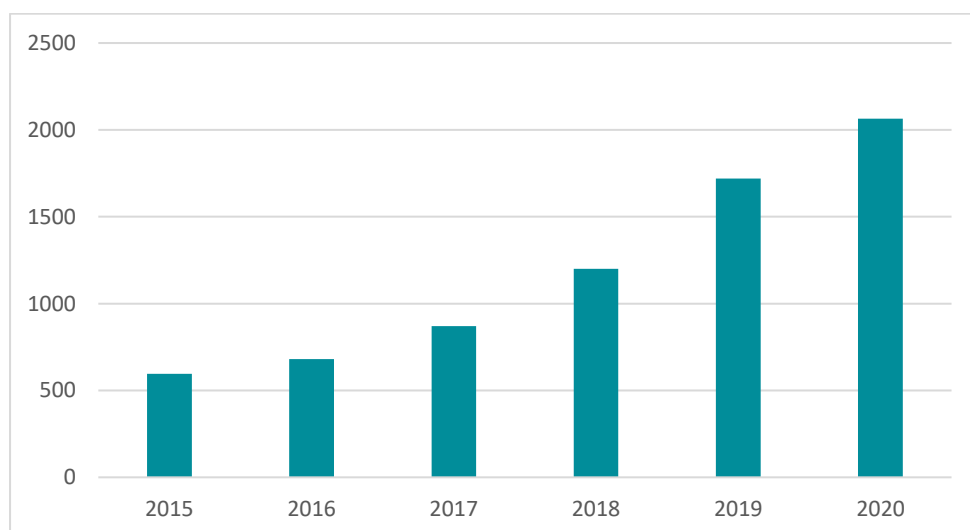
³ This reflects a broadly similar nationality breakdown of applicants to the '10-year' family and private life routes (see Home Office 2020a).

Aside from 'change of conditions', the other main route for lifting the NRPF condition is the 'destitution domestic violence' (DDV) concession. The DDV concession is available for people who were previously granted leave as the spouse or partner of a British citizen or settled person and whose relationship with their partner has broken down as a result of domestic violence. In order to qualify, they must also be in need of public funds to leave the relationship and they must be planning to apply for indefinite leave to remain as a victim of domestic violence. The DDV concession is designed to be a temporary arrangement to grant access to public funds for three months while individuals make their application for permanent residence (Home Office 2018).

Like with change of conditions applications, there has been a significant increase in the number of people granted DDV concessions in recent years (see figure 2.4). The vast majority (89 per cent) of those granted DDV concessions in 2020 were women and most were aged between 20 and 39 (Home Office 2021h).

Figure 2.4: The number of people granted a DDV concession has steadily increased over the past five years

The number of people granted a 'destitution domestic violence' (DDV) concession from 2015 to 2020



Source: IPPR analysis of Home Office (2020h)

Note: This chart is based on an FOI response to an IPPR request for a breakdown of people granted the DDV concession by year, age, gender and nationality. Figures are subject to rounding error.

Both these routes for lifting the NRPF condition are only available to individuals with particular types of leave who can evidence a set of specific circumstances.

While their use has increased in recent years, they are still unavailable to many with NRPF.

Asylum support

Some people with NRPF are eligible for separate asylum support from the Home Office (NRPF Network 2018). Asylum seekers may be eligible for 'section 95' support if they are destitute. This can involve accommodation and direct financial support (currently £39.63 per week). Refused asylum seekers who are destitute may also be eligible for 'section 4' support under limited circumstances (for instance, where they are taking all reasonable steps to leave the UK or where they cannot leave the UK due to physical impediment or another medical reason preventing travel) (Gower 2021).

Local authority support

As a last resort, people with NRPF may in some circumstances be able to get support from their local authority on the basis of their statutory duties. The main situations where this may apply include (this section is specific to England only; parallel legislation and guidance apply in Scotland, Wales, and Northern Ireland):

Children in need: under section 17 of the Children's Act 1989,⁴ local authorities have a duty in general terms to safeguard and promote the welfare of children in their areas who are in need. The act gives local authorities the power to support the families of children in need, including in cases where they have NRPF. Children are in need if they are unlikely to achieve or maintain a reasonable standard of health or development without the local authority's support, if their health or development is likely to be significantly impaired without such support, or if they are disabled. Under Schedule 3 of the Nationality, Immigration and Asylum Act 2002, some people with NRPF – including people in the UK without permission (who are not asylum seekers) – are excluded from section 17 support unless this would breach their human rights. In these cases, a further human rights assessment is required (Project 17 2020).

⁴ Although this briefing refers to section 17 support in England, there are equivalent provisions in the devolved nations. Such provisions come under section 22 of the Children's Act 1995 in Scotland, section 37 of the Social Services and Wellbeing Act 2014 in Wales, and article 18 of the Children Order 1995 in Northern Ireland.

Care leavers: under the leaving care provisions of the Children’s Act 1989, local authorities are responsible for providing certain forms of support to former looked after children up to the age of 21 (or 25 if they are in education or training). This may include accommodation, financial assistance, personal advisers, pathway plans, and help with education and training. As with section 17 support, some people with NRPF are excluded from accommodation and financial support unless it would breach their human rights (NRPF Network 2016).

Adults with care needs: under the Care Act 2014, where it appears that adults may be in need of care and support, local authorities are required to carry out an assessment to determine their needs. An adult is then eligible for support where (i) their needs arise from or are related to a physical or mental condition, (ii) where this prevents them achieving at least two day-to-day outcomes specified in legislation (eg managing nutrition, maintaining personal hygiene, and managing toilet needs), and (iii) where this significantly impacts their wellbeing. People with NRPF are eligible for this support provided their needs are not solely a result of being destitute. As with section 17 of the Children’s Act, some people with NRPF are excluded from help unless it can be demonstrated that this would breach their human rights (NRPF Network 2018).

Emergency support: at the beginning of the pandemic, the government asked local authorities in England to provide emergency accommodation to all those sleeping rough, as well as homeless people in accommodation where it was difficult to self-isolate (MHCLG 2020). It was originally unclear whether local authorities had the legal powers to accommodate those with NRPF. The situation was recently clarified in a High Court judgement, which held that local authorities could accommodate individuals with NRPF on the basis of the Local Government Act 1972, which gives councils additional powers in emergencies or disasters, as well as the NHS Act 2006, which allows councils to take steps to improve the health of people in their areas (SW 2021).

Data collected by the NRPF Network from 66 local authorities in England and Scotland indicate that the amount they were spending on supporting people with NRPF at the end of the 2019/20 financial year was equivalent to around £44 million per annum (NRPF Network 2020a). This translated to around £18,000 per household. By the end of the financial year, a total of 2,450 households were being supported.

The majority of support tended to go to households where the main applicant had no immigration status or was an asylum seeker or refused asylum seeker, rather than someone with leave to remain with the NRPF condition. Notably,

around 77 per cent of households had their support ended as a result of securing leave to remain with recourse to public funds, allowing them to access the mainstream benefits system (ibid). This suggests that many people with NRPF who are reliant on local authority support could get mainstream government support with the right legal advice.

Research suggests that how local authorities manage their statutory duties varies from place to place, with some councils imposing high thresholds for when support can be accessed. Where people do receive support, accommodation provided can often be inadequate and subsistence payments can be extremely low (Price and Spencer 2015).

How has Covid-19 impacted people with NRPF?

While robust data is limited, the Covid-19 pandemic is expected to have had a disproportionate impact on people with NRPF. The pandemic has led to a significant economic downturn and the closure of businesses across the UK, especially in hospitality – a sector where non-EU workers are highly concentrated (Migration Exchange 2020). Without any social safety net, people with NRPF who lost work during the pandemic have been at particular risk of destitution (Morris 2020). The surge in ‘change of conditions’ applications discussed above suggests that many on the ‘10-year’ route became destitute in the wake of the pandemic.

Evidence from frontline services confirms that people with NRPF faced particular financial challenges during the pandemic. According to Citizens Advice, there was a 110 per cent year-on-year increase in the number of issues relating to NRPF raised by clients in spring 2020. The charity found that some of their clients with NRPF were facing high levels of debt, while others who were instructed to shield by the government faced having to go into work regardless because of their financial situation (Citizens Advice 2020). A survey of voluntary sector organisations working with people with NRPF found that the most common new challenge faced by service users as a result of Covid-19 was getting enough food (Dickson et al 2020).

During the pandemic, local authorities under the ‘everyone in’ scheme provided temporary accommodation for people who were rough sleeping and those in accommodation where it was hard to self-isolate. While the government first indicated that local authorities should seek to support those with NRPF, there was a lack of clarity over the legal and financial mechanisms for providing this support (particularly for single adults who would not be otherwise covered by

local authority's statutory duties). According to research carried out by Dickson et al (2020), while some councils placed practical emergency support for those with NRPf, the England-wide response was "characterised by confusion, a lack of information about support options, the 'gate-keeping' of access to accommodation, and gaps in essential provision".

Nevertheless, some local authorities took considerable steps to accommodate and protect those with NRPf during the height of the pandemic. In London, for instance, councils and the Greater London Authority (GLA) provided an estimated 1,700 people with NRPf with emergency accommodation under 'everyone in' (London Councils 2020).

What is the future for NRPf?

Government policy is in the process of significantly expanding the cohorts of people with the NRPf condition. In particular, the following groups have recently become or will soon become subject to NRPf:

- **'Group two' refugees:** the new nationality and borders bill provides for differential treatment of refugees based on the route which they have taken to come to the UK (nationality and borders bill 2021). Those who have not come to the UK 'directly' from a country or territory where their life or freedom was threatened, those who have not presented themselves without delay to the UK authorities, and those who have come to the UK unlawfully without good cause will be categorised as 'group two' refugees. The bill will allow 'group two' refugees to be treated differently to other ('group one') refugees. According to the new plan for immigration, where a 'group two' refugee claim is successful, they will be granted temporary status subject to the NRPf condition (Home Office 2021a). (There is a suggestion that, as with the '10-year route', this condition could be lifted where people are destitute.) The government therefore intends to remove access to public funds for a potentially significant share of future refugees.
- **EU citizens who have not applied to the EU settlement scheme:** EU citizens and family members who were living in the UK by 31 December 2020 but who did not apply to the EU settlement scheme before the 30 June deadline (and have no other leave to remain) do not have permission to be in the UK. This means they will have no recourse to public funds. While the size of this group is unknown, there is a risk that a significant number will not have applied on time (Sumption and

Fernández-Reino 2020). The government has recently announced that late applicants will have their rights protected while they wait for a decision (Home Office 2021i). However, those on benefits who have not yet applied are at risk of having their benefits removed if they do not make a late application (Forrest and Bulman 2021). Individuals with pre-settled status will be able to access public funds but will need to demonstrate a qualifying 'right to reside' for welfare purposes to claim benefits such as Universal Credit.

- **EU citizens arriving in the UK after December 2020:** EU citizens who want to move to the UK after the end of the transition period (31 December 2020) and who have not previously lived in the UK will in most cases need to apply for a relevant work, study or family visa. In general, this means that new EU citizens will be subject to the NRPF condition, in contrast to the previous arrangements for EU citizens under free movement rules. (Exceptions include frontier workers and certain family members of EU citizens living in the UK before 31 December 2020.)
- **Hong Kong BN(O) visa holders:** at the beginning of 2021, the government introduced a new route for people from Hong Kong registered as British nationals (overseas) (BN(O)s) in response to China's suppression of democracy in Hong Kong. The new BN(O) route allows for the right to live, work and study in the UK, but the NRPF condition is attached. Notably, however, the NRPF condition can be lifted through a change of conditions application in cases of destitution, similar to the process for people on the 10-year route (Home Office 2021j).

These changes mean that in future the NRPF condition is expected to apply to a greater range of migrants, including those likely to be particularly vulnerable such as 'group two' refugees.⁵ This could have major consequences for destitution and put further financial pressures on local authorities with large numbers of residents with NRPF.

⁵ Moreover, under the new plan for immigration there are proposals to further restrict access to Home Office support for refused asylum seekers (implementing provisions originally included within the Immigration Act 2016 to replace section 4 support with the more limited section 95A support).

A REFORM PROGRAMME FOR NRPF

As we set out in the previous chapter, the current NRPF policy has put many individuals and families at a high risk of poverty and destitution. At the same time, it has shifted the cost of providing support from central to local government, which is often required to step in at the point of crisis to fulfil its statutory duties. The pandemic has exacerbated these challenges, placing greater pressures on local authorities and creating a surge in applications to lift the NRPF condition from people facing destitution or other severe financial difficulties. The current system is in clear need of reform.

There are three types of approach to NRPF reform which we consider: short-term emergency measures in the context of the pandemic; medium-term changes over the next two-three years; and longer-term reform over the next decade. In the short-term, IPPR has previously argued for an urgent suspension of the NRPF policy over the course of the pandemic, given the financial risks posed to migrant workers in sectors affected by Covid-19 and who otherwise have no social safety net (Morris 2020; Patel et al 2020). In the long term, we are in favour of exploring an ambitious programme to transform the NRPF policy as part of the wider reform agenda set out in our recent report 'Beyond the hostile environment' (Qureshi et al 2021).

However, in the medium-term we recognise that the broad contours of the policy are likely to stay in place. In this briefing, we therefore focus on proposing medium-term changes to NRPF policy which operate within the context of the current system. Our proposals are based on the outcomes of a policy workshop on NRPF with expert stakeholders from local government and the charity sector that was conducted in April 2021.

Our proposals focus on addressing some of the key issues highlighted above in three ways:

1. Reconsidering the definition of 'public funds'
2. Easing pathways for the NRPF condition to be lifted
3. Helping local government to support people with NRPF

We explore each of these proposals in turn.

Reconsidering the definition of 'public funds'

As explained in the previous chapter, only some types of government support are defined as 'public funds' and are therefore unavailable for those with NRPF. We argue that **the government should review the list of public funds and consult on how it could be amended.**

More specifically, as part of this review we think there is a case for removing certain categories of benefits from the definition of 'public funds'. First, we recommend that **benefits which are intended to support children – including child benefit and child tax credit – should be excluded from the definition of public funds**, in order to support efforts to reduce child poverty. A recent study by the Children's Society based on interviews with parents with NRPF found that limited access to government support can have major impacts on the welfare of children, including problems getting nutritious food, damage to education as a result of exclusion from school trips, and developmental challenges related to unsuitable accommodation or homelessness (Pinter et al 2020). There is therefore a clear case for exempting child-related benefits from the NRPF policy.

In addition, we recommend that **the government guarantees that all children of families with NRPF are able to access free school meals.** Free school meals are technically not defined as public funds and local eligibility policies vary; however, in many schools and local authorities in England, children in Year 3 and above are only eligible if family members can access certain 'qualifying benefits' or section 95 asylum support. This means that in practice many children of families with NRPF cannot get free school meals (Project 17 and Sustain 2020). During the pandemic, the government has temporarily granted free school meals eligibility for some cohorts with NRPF, including: children of Zambrano carers, children of families on a family or private life route based on Article 8 of the ECHR, and children of families receiving section 17 support who are subject to NRPF (DfE 2021). However, this is only a temporary measure and excludes some children of families with NRPF. In recognition of the need to address child food poverty, the government should extend this concession to all children of families with NRPF and ensure this change is permanent.

Second, we argue that **local welfare funds should be excluded from the definition of public funds**, to allow local authorities to have the flexibility to decide how to spend their own resources. Since 2013, each local authority in England has had a local welfare fund to provide discretionary support to

residents – for instance, through cash payments, food vouchers, or support via local charities. (This replaced the former national social fund.) Yet local authorities do not have the powers to use these funds to directly support residents with NRPF. This has hindered local government from providing emergency support during the pandemic (NRPF Network 2020b). We therefore recommend this restriction is lifted and that local welfare funds are no longer classes as public funds. We similarly recommend lifting restrictions on the Scottish Welfare Fund and the Discretionary Support Scheme in Northern Ireland.

Easing pathways for the NRPF condition to be lifted

There are currently two main pathways for individuals to lift their NRPF condition: people on the '10-year' route may be able to apply for a change of conditions or people on a partner visa whose relationship has broken down due to domestic violence may be able to apply for the destitution domestic violence (DDV) concession.

These routes are only available to people on a strict set of visa types. While the government has recently announced that the change of conditions application will be available to people from Hong Kong on the BN(O) visa, it is not clear what the justification is for barring other cohorts of people with NRPF from accessing the same scheme. Ultimately, individuals who meet the other criteria for a change of conditions – for instance, they are destitute or at risk of becoming destitute – will be just as in need of support regardless of their visa type. Similarly, people with NRPF who are subject to domestic violence and are destitute will need support irrespective of whether or not they hold a partner visa.

We therefore propose that **the government should extend the change of conditions policy and destitute domestic violence (DDV) concession to all people with leave to remain with NRPF**, regardless of their visa type. This would help to simplify the current rules and ensure that more people at risk of destitution are able to lift their NRPF condition.

Moreover, there should be no requirement for people on the five-year partner/parent route to move to the 10-year route if they make a successful change of conditions application. This policy risks undermining the integration of long-term migrants and worsening their financial precarity by imposing additional visa fees over a longer period for them to secure settlement. A

simpler approach would allow people on the five-year route to make an application for a change of conditions without surrendering their current status.

Finally, as part of its wider programme aimed at simplifying immigration rules, we suggest that **the government conducts a review of the change of conditions route with the aim of streamlining the application process.** The NRPF Network found through its analysis that most households exit local government support by securing leave to remain with recourse to public funds. However, evidence from a study by the Unity Project suggests that many people struggle to make change of conditions applications independently: according to a telephone survey of 66 people assisted by the charity with their application, around 90 per cent who tried to apply independently were unsuccessful. The study highlighted procedural barriers, excessive evidence requirements, and inconsistent decision-making as key problems with the current system (Woolley 2019). Moreover, according to Home Office data the average length of a decision appears to vary considerably by quarter, ranging from 18 days in the last quarter of 2019 to 46 days in the second quarter of 2020 (Home Office 2021c).⁶

We therefore recommend that **the government considers ways to simply and speed up the process and sets service standards for caseworkers to encourage fast, accurate and fair decision-making.** As part of this effort, we suggest that decisions on destitution for change of conditions applications could where appropriate be based on assessments by local authority social services staff. This would give more powers to local authorities to resolve immigration cases, help to simplify the work of the Home Office, and offer a more joined-up system between local and central government.

Helping local government to support people with NRPF

Analysis in this briefing has highlighted the pressures faced by local authorities in supporting people with NRPF. In our workshop with local authority and charity stakeholders, participants highlighted that the costs of supporting people with NRPF had in many cases been passed from central to local government without any direct compensation. **We therefore propose that central government support local authorities with large NRPF populations through direct and targeted funding.** The level and distribution of resourcing could be based on the data collected by councils on NRPF spending through NRPF Connect.

⁶ This was not just an exception due to the surge in applications at the start of the pandemic; in the third quarter of 2019 the average number of days to a decision was 40.

There are particularly urgent issues for local authorities in light of the coronavirus pandemic. With the winding down of the 'everyone in' scheme, local authorities have taken different approaches to helping people transition out of emergency accommodation. In one study from 2020, some local authorities said they were aiming to help move people with NRPF into more sustainable housing solutions, while others suggested that they would withdraw support or that their plan was 'repatriation' (Dickson et al 2020).

The central government should therefore play a greater role in convening local authorities to ensure that the level of transitional support being provided is consistent nationwide. MHCLG could support local authorities to share good practice, including providing longer-term 'move-on' housing support and working with the voluntary sector to offer other forms of assistance to people with NRPF (eg language support and legal immigration advice) (see Broadhead and Kierans 2020).

In addition to increasing funding for local authorities, the government **should also provide greater clarity on the legal powers and duties which councils in England have to support those with NRPF**. As explained in the previous chapter, under certain circumstances local authorities have statutory duties to provide support to people with NRPF. However, the level of support varies from local authority to local authority because of how these duties are interpreted. Central government should release more explicit guidelines on when support is lawful and unlawful. This would encourage greater consistency across England in the provision of support to families and individuals with NRPF. Improved guidelines could also help to address 'gate-keeping' practices, where local officers refuse support in spite of their legal duties.

The nationality and borders bill

Finally, aside from these three reform proposals, we recommend against the government's plans – as set out in the nationality and borders bill and the new plan for immigration – to extend the NRPF condition to some refugees. This cohort is by definition highly vulnerable: people who originally came to the UK for asylum reasons are more likely to be on lower incomes than the UK born and are significantly more likely to report long-term health conditions (Kone et al 2019). Subjecting a subset of refugees to the NRPF condition is likely to put many in this group at risk of destitution, placing further pressures on local authorities and emergency services. **We therefore advise that rights to public funds are retained for all refugees, regardless of the route they have taken to come to the UK.**

CONCLUSION

The pandemic has revealed that the 'no recourse to public funds' condition is no longer fit for purpose. Due to current NRPF policy, millions of people in the UK had no social safety net amid widespread business closures and job losses at the start of the pandemic. While the policy was originally intended to promote integration and reduce the burden on the taxpayer, in practice it has put many at risk of destitution, inhibited social and economic inclusion, and placed additional pressures on local government finances. The case for reform is clear.

In this briefing, we have proposed three key areas where the policy can be improved: first, by changing the definition of public funds to allow people with NRPF to access certain support measures, in particular those which advance child wellbeing; second, by easing the rules for individuals to lift the NRPF condition where they are in need of support; and third, by providing greater resources and legal clarity to local government for them to support and accommodate those with NRPF.

Finally, we urge the government to change course on its latest plans to extend the NRPF condition to refugees who have not come to the UK 'directly', who have not presented themselves without delay to the authorities, and who have come 'unlawfully' without good cause. These proposals risk pushing many of the most vulnerable people in the immigration system into poverty and further depleting local authority resources.

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