

## **A Guide to Care Act Support for Families with NRPF**

### **Who is this guide for?**

This guide is for advisers working with families with no recourse to public funds who are receiving Local Authority support under Section 17 of the Children Act, that include an adult(s) with care needs.

### **What does 'no recourse to public funds' mean?**

Most welfare benefits, homeless assistance and social housing are 'public funds'. Many migrants will have 'no recourse to public funds' (NRPF) which means that they are unable to claim these welfare benefits or get social housing. This includes people who have leave to enter or remain in the the UK with an NRPF condition attached, eg leave to enter as a visitor or leave to remain as a student. It also includes people whose leave to enter or remain is subject to a maintenance undertaking, for instance leave to remain as the adult dependent of someone with settled status. In these situations the term 'no public funds' will be stated on the residence permit. People with no leave to enter or remain, for instance someone who has overstayed their visa, an asylum seeker who has exhausted their appeal rights or an undocumented migrant will also have NRPF.

### **What is the Care Act 2014?**

The Care Act 2014 sets out the responsibilities that Local Authorities have to meet the needs of adults with 'care needs' who are present in their area. Services provided by Local Authorities under the Care Act 2014 are not 'public funds' so they can be accessed by people with NRPF.

To access support under the Care Act 2014 an adult will normally need to have 'eligible needs'. This means that because of a health problem they are unable to achieve at least two of the 'specified outcomes' listed below, and this is in turn having an impact on their wellbeing.

#### Specified Outcomes

- managing and maintaining proper nutrition, for example being able to prepare and eat food and drink
- maintaining personal hygiene, for example being able to wash properly
- managing toilet needs
- being able to dress appropriately, for example putting on enough clothing to keep warm
- being able to move around the home safely, for example without tripping and falling
- keeping the home clean and safe
- being able to develop and maintain family or other personal relationships
- accessing and taking part in work, training, education or volunteering
- being able to make use of necessary facilities or services in the local community, for example using public transport to get to the shops, place of worship or community centre
- being able to carry out any childcare responsibilities



## The Care Rights Project

An individual will be considered to be unable to achieve an outcome if they need help to achieve it or if, even though they could achieve it on their own, doing so would take much longer than would normally be expected or cause them pain, distress or anxiety or would endanger their (or someone else's) health or safety.

### Wellbeing

The Care Act 2014 relates 'wellbeing' to following areas:-

- personal dignity
- physical and mental health and emotional wellbeing
- protection from abuse and neglect
- control over day to day life (including over care and support and the way in which it is provided)
- participation in work, education, training or recreation
- social and economic wellbeing
- domestic, family and personal relationships
- suitability of living accommodation
- the individual's contribution to society

### The Destitution-Plus Test

Section 21 of the Care Act states that where an adult has NRPF, the Local Authority will not have to meet their needs for care and support if these needs arise solely from destitution or its effects - this is known as the 'destitution-plus' test. So, it is important to have a good understanding of what the adult's needs are and how they have arisen. It can be helpful to collect evidence from their GP, hospital consultants, nurses or any other health professionals who can provide details of their conditions and the impact these may have on every day life. NB if you are writing to health professionals especially to request information and the adult is undocumented, you should first get advice regarding NHS debts.

### The Human Rights Test

Some people with NRPF are excluded from accessing support under the Care Act unless a failure of the Local Authority to meet their needs would result in a breach of their human rights (under the European Convention on Human Rights), and this breach could not be avoided by their return to their country of origin. Schedule 3 of the Nationality, Immigration and Asylum Act 2002 lists the categories of people who are excluded in this way; it includes undocumented migrants and asylum seekers who have exhausted their appeal rights. These people not only need to demonstrate that they have eligible care needs and that these needs do not arise solely from destitution or its effects, but also that a failure of the Local Authority to provide support would breach their Human Rights and that this breach could not be avoided by them returning to their country of origin - this is known as the 'human rights test'. A person's human rights could be breached in a number of different circumstances, for instance if they were left homeless and destitute because the Local Authority failed to act this would breach their rights under Article 3. This breach of human rights could not be avoided by the person returning to their country of origin if there was a barrier in place, for instance, if they were making an application for leave to remain in the UK, their Human Rights would be breached by returning to their country of origin, or if they were too unwell to travel etc.

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### How can adults get support?

Adults with care needs should be referred to the Adult Social Services team of the Local Authority where they normally live. However, if the family is already receiving Section 17 support from one Local Authority which has placed them 'out of area' in a second Local Authority, the referral should be sent to both Authorities with a reminder that the Care Act requires them to cooperate in order to prevent any delays in needs being met.

When making the referral it is important to include as much accurate detail and evidence as possible. You can use our template letter or write your own letter/email setting out all the relevant information.

The Local Authority will want to know:-

- Details of any physical or mental health conditions - the names of the conditions and when they were diagnosed.
- How these physical or mental health conditions that impact on the adult's ability to achieve the 'specified outcomes' set out above
- How this is impacting on 'wellbeing'
- Who (if anyone) is currently providing care and support and if/why there are any problems with the current arrangement
- Where the family are living now, how long they have been there and who is providing the accommodation.
- If the accommodation is unsuitable due to the adult's care needs this should be explained in as much depth as possible
- What financial support the family is getting. If the adult needs extra support because of their care needs this should be explained in as much detail as possible.
- When the adult came to the UK and details of their immigration status, if they are receiving immigration advice and/or are in the process of making an application to the Home Office you should explain this

It is helpful to send as much evidence as you can with your referral for example:-

- Letters from medical professionals relating to any complications/underlying health conditions
- Letters from any informal carers explaining what support they provide/why they are no longer able to continue/why they need additional help
- Evidence of the unsuitability of accommodation (if relevant)
- Evidence of the need for additional subsistence/goods to meet care needs.
- Bank statements/S17 support letter
- Copy of ID, details of immigration solicitor and/or outstanding application for leave to remain

### Risks associated with requesting support

Local Authorities will routinely inform the Home Office about migrants who approach them for help; the Home Office and some Local Authorities have a shared database system (Connect) and some Local Authorities also have embedded Immigration Officers working alongside social workers in specialist 'No Recourse' teams. This may cause problems if your client has failed to comply with removal directions or has no leave to remain and no outstanding applications. However, if your client has a barrier to return to their country of origin, they are not at risk of removal. There may be a legal barrier to return if the client has applied to the Home Office for leave to remain and they are waiting for a decision or appealing a refusal. There may also be practical barriers to return, for example, if your client does not have a passport or cannot afford the airfare. Home Office policy is that adults with mental health conditions or impairments, and serious physical disabilities or health conditions, and those over 70 may be 'particularly vulnerable to harm in detention' and should not normally be detained. However, the Home Office can also take into account 'immigration control considerations' and these may outweigh the presumption against detention. So, in practice, vulnerable migrants may be detained. If your clients are already receiving support from the Local Authority under Section 17 of the Children Act, their details will usually already have been shared with the Home Office.

The Home Office may expedite immigration decision-making for people supported by the Local Authority. If the claim is strong, this could lead to a positive result, but for weak claims it could lead to a quicker refusal. This is another reason to seek immigration advice if your client has not done so already and discuss the possible consequences with the client prior to making a referral.

Not all NHS services are free for people with NRPF. A client's GP/Health Trust may not be aware of the NRPF status and may have already provided chargeable treatment for free. Before contacting any health professionals to request supporting evidence it is important to check the potential impact on the client. For instance the client may be required to pay up-front for treatment they are being referred for or if they have already received chargeable treatment/have had an invoice they should be referred to an immigration adviser to discuss the impact of NHS debts on future applications for leave to remain.

*It is important that you discuss these potential risks this with your client before making a referral and if going ahead with a referral it is crucial that you carefully check all the information to ensure that it is accurate and consistent with any application for leave to remain. Any inaccuracies or inconsistencies can undermine the client's credibility and result in help being refused.*



## The Assessment

Section 9 of the Care Act states that “where it appears to a local authority that an adult may have needs for care and support, the authority must assess (a) whether the adult does have needs for care and support, and (b) if the adult does, what those needs are”. It must do this regardless of its view of the adult’s needs for care and support or the adult’s level of financial resources.

This means that the threshold for carrying out an assessment (the ‘appearance’ of need) is very low and a refusal to carry out an assessment is quite likely to be challengeable.

There is nothing in the law that tells the Local Authority how long they have to carry out a needs assessment under the Care Act, but they must do it within a ‘reasonable’ amount of time. What is ‘reasonable’ will depend on individual circumstances, but where someone is suffering a detriment as the result of a delay they should be assessed urgently.

A needs assessment will normally be carried out by a social worker. It should include a discussion of the client’s health conditions, care and support needs (the help they need with every day activities) as well as any issues with the current accommodation and subsistence. The social worker will ask about how the adult has managed in the past and explore whether the current situation can continue. They will often ask about alternative sources of support, such as family, friends, and acquaintances in the wider community and may question why the client can’t get help elsewhere. They may also look for indications that the client should be supported by a different area. If the Local Authority is carrying out a Human Rights assessment they will ask about whether the client can return to their country of origin. This can feel very intrusive and social workers will often ask very personal questions.

As set out in the eligibility criteria, social workers should look at ways to support clients to carry out their childcare responsibilities and if there are no safeguarding concerns they should not be suggesting that children are taken into care as a result of a parent’s care needs.

If there is going to be a delay in carrying out an assessment the Local Authority can exercise their powers under Section 19 (3) of the Care Act to meet urgent needs prior to an assessment. This can include interim accommodation if the current accommodation is very unsuitable.

## The Decision

The Local Authority should inform the client (and anyone assisting or caring for them) whether they will support them under the Care Act, and if so, what support they will provide. They must also give a written copy of the care needs assessment (and human rights assessment if one is completed) to the client and anyone else who is assisting or caring for them. If a Local Authority fails to provide a copy of the assessment this is something that can be challenged.

If the Local Authority refuses to carry out an assessment, or the client disagrees with the Local Authority’s decision following an assessment it may be possible to ask for a review and to bring a legal challenge.

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## What support can adults get?

Depending on their circumstances, the client may be able to get:-

- Care and support - this may be a carer visiting to help with washing/dressing/cooking/laundry etc or helping with shopping, getting around the local area. A local authority will not be able to provide a carer if the client's needs can continue to be met by an informal carer who is willing and able to do this. However, in circumstances where a carer needs support in order to continue with their role a referral for a carer's assessment should be made at the same time that the client is referred for a needs assessment. This may result in a care package to support both parties.
- Accommodation - if the family is already being accommodated under Section 17 of the Children Act it is unlikely that they would be offered alternative accommodation under the Care Act unless their current accommodation was so unsuitable that as a result the client's care needs could not be met. For instance, if the client was a wheelchair user and was unable to receive help to wash because they couldn't gain access to the bathroom. If accommodation is offered, it may be out of the Local Authority's area.
- Financial assistance - this is usually 'subsistence level' so if the family are already receiving support under Section 17 of the Children Act the Local Authority would only be obliged to provide additional assistance if it could be shown that it was required to meet specific care needs.

Once a care plan is in place this should be reviewed regularly to ensure that the client's needs continue to be met. If there are changes in the client's health conditions or the family's circumstances they can request a reassessment, but they should be aware that this could ultimately result in a negative decision and less favourable provision.

## What to do next?

If the family is already getting support under Section 17 of the Children Act it is likely that they already have an immigration adviser; however if they do not, then it is very important to find one as soon as possible. You can read about the Care Act in more detail and get information and advice from The Care Rights Project. You can also get further information about the rights and entitlements of people with NRPF.