



The 'No Recourse to Public Funds' policy in UK immigration law – a source of injustice, inequality and destitution

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# **Executive Summary**

## **1. Introduction**

This report looks at the effects of the No Recourse to Public Funds (NRPF) policy on families with young children. NRPF is a condition imposed on grants of limited leave to enter or remain with the effect of prohibiting the person holding that leave from accessing certain defined public funds. A person who claims public funds despite such a condition is committing a criminal offence and there may well be future immigration consequences as well, as any existing leave can be curtailed or a future application refused, including an application for full British citizenship.

Additionally, section 115 of the Immigration and Asylum Act 1999 prevents migrants from accessing a range of welfare benefits unless they fall into one of the very limited exceptions.

Our charge is that the imposition of such policy is an intended strategy of the current Conservative Government to make the completion of the journey towards full citizenship as difficult as possible, forcing as many people as possible to abandon their efforts for settlement and return abroad.

The evidence base for this report is based on findings provided by local community-based support organisation who work with migrant families. In many cases these migrants' route to a secure residence status is likely to remain blocked for many years to come, but who in the meantime are in situations of great need which require urgent relief.

The key effects of NRPF policy for migrant families with young children are summarised as follows: poverty and destitution; exacerbated inequalities; and maximum disadvantage.

The report highlights the inadequate safety net provision for migrant families and the exorbitant cost of Home Office fees to apply for leave to remain as the main areas of critical policy failure. It also offers up recommendations for policy change including the establishment of a new welfare agency tasked with reducing the risks experienced by migrant families with limited leave to remain subject to NRPF.

## **2. Key effects of NRPF policy**

## 2.1 Poverty and Destitution

This restriction makes the deepest and most damaging impact on migrant families who come to the U.K. with the intention of settlement and citizenship, and who are often absorbed in the task of raising young children<sup>1</sup>. The effect of this policy is often to deprive parents and children of the basic essentials of life, such as secure accommodation, decent clothing, and even food itself.

Children being raised by immigrant parents who are subject to no recourse experiences hardship for the first ten years of their lives – and sometimes longer. Poverty leaves deep scars for these children, creating long term harm that makes it difficult for them to ever recover from.

## 2.2 Exacerbated Inequalities

The policy disproportionately affect categories of people, recognized by equality legislation, as most likely to encounter inequalities on the grounds of gender, race, disability, as well as social class/socio-economic status.

People with limited leave to remain in the U.K. with NPRF are at the greatest risk of poverty and destitution, and include the following groups of people:

- migrants from countries with substantially lower average incomes for the majority of citizens, which often means racialized migrants coming to the U.K from Global South territories
- migrants who might be well-educated and have skills which make them eligible for employment in the UK, but have very limited savings, assets or social networks of support that can be called upon during difficult times.
- migrants that are accompanied by dependent family members – particularly children.
- Female migrants, particularly those who are single-mothers
- migrants experiencing domestic violence and violence against women and girls
- migrants with disabilities
- migrants with caring responsibilities for family members with disabilities

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<sup>1</sup> Ereli, Umut, Maggie O'Neill, Tracey Reynolds, and Erene Kaptani (2017), "[Crisis upon Crisis: Migrant Families with No Recourse to Public Funds](https://discoversociety.org/2017/05/02/crisis-upon-crisis-migrant-families-with-no-recourse-to-public-funds/)", Discover Society. <https://discoversociety.org/2017/05/02/crisis-upon-crisis-migrant-families-with-no-recourse-to-public-funds/>

People with limited leave with in the U.K. and subject to NRPF restrictions are ineligible for welfare benefits and services including Universal Credit, which further exacerbates inequalities.

### **2.3 Maximum disadvantage over a long duration**

Based upon the work of community organisations we identify three main categories of families who are particularly affected by this restriction:

1. People granted limited leave in the U.K. as the family member of a person settled in the UK
2. People granted limited leave to remain in the U.K. as the parent of a child with residence rights
3. Parents caring for children who have made applications for leave to remain in the U.K.

Oftentimes, the poorest migrants experience maximum disadvantage and this destitution can be of long duration. Even the person admitted as a family member of someone settled in the UK will normally be subject to a NRPF condition for the duration of their leave.

The experience of poverty in the formative years of an individual's life invariably has long lasting effects. The NRPF policy has the potential to enshrine poverty across successive generations, in particular for children from working-class racialized migrant families.

## **3. Areas of critical policy failure**

### **3.1 Current safety-nets for welfare of migrants with children are not working**

The UK courts uphold that the State has a legal obligation to consider the best interests of the child. However, clear direction on what this means is lacking especially for local authority social services departments, the statutory bodies responsible for safeguarding children's interests.

Section 17 of the Children Act 1989 imposes a 'general duty' on local authorities to have regard for the welfare and wellbeing of children as follows:

- (a) to safeguard and promote the welfare of children within their area who are in need; and
- (b) so far as is consistent with that duty, to promote the upbringing of such children by their families, by providing a range and level of services appropriate to those children's needs.

The range of practices adopted across local authorities to meet the requirement extends from providing accommodation and cash payments on or around the level of support provided to recipients of Asylum Support to lesser.

However, a report published by the Children's Society in 2016 looked into the position of families receiving Section 17 support. It reported research that found that almost two thirds (64%) families often had to endure these inadequate and unhealthy conditions for prolonged periods of time. The study by the Children's Society found that 40% of families whose circumstances had been considered had remained in this type of accommodation for more than six months, "allowing for these unacceptable housing conditions 'to have a profound and sustained impact on a child's life."<sup>2</sup>

With regard to the subsistence rate provided to families in receipt of section 17 support to meet the need for nutrition, the same report found that the low level payments generally made available, combined with "often inadequate or absent cooking facilities in B&Bs and other types of unsuitable housing..." led to "food poverty". Families made use of food banks but, lacking cooking facilities in the accommodation provided by the local authority, they were "... unable to cook healthy, nutritious food for young children .... and unable to buy a satisfactory amount of food for the family." The report cites incidents of "...children going to school hungry, or with mouldy bread or a packet of crisps for their lunch."<sup>3</sup>

Other migrant support groups report that some local authority social services departments engage in 'gatekeeping' practices to shield them from claims from migrant families subject to NRPF restrictions. For example, North East London Migrant Action (NELMA)<sup>4</sup> conducted a study of people approaching their local authorities to be assessed for Section 17 support. It found that 49% of people were refused even an initial screening interview.

This gatekeeping practice has been sharply criticised by social work professionals as 'a tool for controlling immigration' where 'social workers assume the role of 'border guard' <sup>5</sup>. In essence, they argue that immigration concerns overshadow the concern for children's well-being.

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<sup>2</sup> See *Making Life Impossible: How the needs of destitute migrant children are going unmet* by Zoe Dexter, Lucy Capron and Lucy Gregg, The Children's Society, April 2016, p.27.

<sup>3</sup> *ibid.* p. 28.

<sup>4</sup> Michael Boyle "Why can't you support yourself?" *Constructing 'irregularity' through Section 17 support*, unpublished dissertation

<sup>5</sup> See 'No Recourse to Public Funds', *insecure immigration status and destitution: the role of social work?* by Natalia Jane Famer, *Critical and Radical Social Work*, 5(3), 2017, pp.357-367.





Advisors working for migrant support groups report similar instances where immigration officials ‘embedded’ in social services departments have intervened in discussions with Section 17 support applicants, resulting in applicants feeling threatened that their limited leave to remain in the UK may be revoked.

While the Home Office provides for an application route for lifting the NRPF condition, this procedure applies to certain categories of leave to remain and under specific circumstances. Migrant support organisations consider the procedure very challenging and costly. This is because it requires documentary evidence which can be very difficult to provide for potential applicants.

Given the crisis in the availability of quality legal advice, only a fraction of the people living in destitution are able to obtain the advice they need. Many migrants subject to NRPF restrictions cannot access free immigration advice on how to proceed with their application. Yet, the evidence shows that when they are able to access this support, their outcome success rate is high.

### **3.2 Exorbitant Home Office Fees**

People subject to NRPF will either be in the process of making an application for leave, or have been granted limited leave to remain with a NRPF condition.

Applications for limited leave involve payment of Home Office fee and, for certain types of applications, an immigration health surcharge. If fee levels remain constant, this means that a parent with two children would have to pay a total of £11,066 in fees if they are on the five year route. A family on the ten-year route – also consisting of a parent plus two children – would pay over £50,000 in fees by the time it reaches the point of obtaining permanent settlement status. The matter of fees also arises in situations where children within the family become eligible to register as British citizens – currently set at £1012.

Community organisations working with migrants report many cases where either the struggle to raise the money to pay these fees itself leads to severe economic hardship and destitution or that a family is not able to claim their child’s right to be British, simply because they

cannot afford the fee. This injustice is now the subject of a campaign launched by Amnesty International UK.<sup>6</sup>

#### **4. Recommendations for Change**

**We call for scrapping the no recourse to public funds policy when it applies to people with a leave to remain the UK.**

For those people, earning incomes that fail to secure the standard of life considered normal, we argue that they should be eligible for the full-range of welfare benefits that would be available to people settled without immigration restrictions. Bringing migrants within the scope of social protection available to others is critically important if we are to tackle the issues of integration and equality in ways that would facilitate the full participation of newcomers in the life of the communities in which they are settling in. This is an urgent task for anyone committed to social justice and to equality as the NRPF restriction is, in practice, potentially discriminating against the most marginalised people in society: women, single mothers, people with disabilities and racialized migrants.

**Until there is an end to the NRPF policy, we call on local authorities to ensure that children of families with NRPF should have access to free school meals.**

It is imperative that they are able to receive free school meals; financial support for uniforms or help with transport to and from school.

**Until there is an end to the NRPF policy, we call on local authorities to end the practice of embedding Home Office officials into social services departments for the purpose of assessing applicants' eligibility.**

In order to avoid intimidation of applicants and ensure that decisions are driven by concerns for family welfare it is important to avoid the presence of immigration officials in social services departments during the assessment process.

**We call for more rigorous and systematic research to robustly assess the extent and long term impact the NRPF policy on family and child poverty.**

A systematic evidence base is required to assess the short and long term impact of the NRPF policy on poverty. This research needs to be based on participatory approaches and the co-production of knowledge with migrant families, policy and community organisations and academics. There has been a growth of research interest on families affected by NRPF,

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<sup>6</sup> See Amnesty International UK, *Stop Blocking Children's Rights* <https://www.amnesty.org.uk/actions/home-office-stop-profiteering-childrens-rights#.WzTCoz5jHq8.twitter>

however this continues to be piecemeal in its coverage of geographic areas and migrant communities. Therefore a national evidence base is needed.

## Section 1. Policy background

### 1.1 The gap between immigration law and the well-being of migrants

During the space of the past year, millions of British people have learnt that the government of the country they live in has been operating what we have come to know as a 'hostile environment' against migrants<sup>7</sup>.

The early stories which appeared in the media from the end of 2017 onwards featured accounts of what this has meant from the standpoint of one community, established in the country for more than half a century – namely the 'Windrush' generation from the Caribbean, some of whom were citizens, but all of which were now labelled 'migrants'. As has been explained in countless feature articles, in aiming to drive net migration down to the 'tens of thousands', the leading government department, the Home Office, set about challenging the rights of even long-settled people, many of whom did not see themselves as migrants, to continue their residence in the UK.<sup>8</sup> The way in which the Windrush generation has been treated has come to be seen as an injustice.

In its efforts to pressure people who had lived, worked, raised families and paid taxes for decades to abandon their claim to a home in Britain, the authorities set about challenging the right of these people to continue in employment, to rent their accommodation, to receive welfare benefits, and to receive health care from the NHS. In short, it aimed quite deliberately at a dramatic increase in hardship and poverty, to the point of precipitating complete destitution, as a normal, day-to-day instrument of its immigration control policies.

People familiar with the way the British immigration system works know that the Windrush generation have not been the only victims of the hostile environment. From a much earlier date, beginning back in the mid-1990s, government policy used similar poverty-increasing approaches against refugee communities as a means, as it was said at the time, to 'send back the message' that the UK was a tough place for asylum-seekers and should not be regarded as a 'refuge of choice.' Vulnerable people in need of accommodation were dispersed across the country, sometimes being separated from family members, finding

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<sup>7</sup> Erel, Umut, Maggie O'Neill, Tracey Reynolds, and Erene Kaptani (2017), "[Crisis upon Crisis: Migrant Families with No Recourse to Public Funds](#)", Discover Society.

<sup>8</sup> For background on the Windrush generation victims of the hostile environment, see <https://www.theguardian.com/uk-news/windrush-scandal> and <https://www.theguardian.com/uk-news/2018/apr/15/why-the-children-of-windrush-demand-an-immigration-amnesty>

themselves in places where social support networks had to be constructed from scratch. Payment of a meagre allowance in the form of cash was denied to many, with a system of vouchers redeemable only at specified shops being imposed on the newcomers.

## **1.2 Hardship: A deliberate policy?**

With years of hardship being imposed on so many migrant groups, the idea that the deliberate denial of welfare support became thought of as a normal part of any system of immigration control. The advocacy of alternative approaches from migrant support groups, to say that conscientious consideration of the well-being of people who had come to work and raise families ought to be a prime consideration of immigration policy received no hearing from successive governments – either Conservative or Labour. On the contrary, the period of time in which new migrants were expected to endure hardship was extended as one-year rules became two-year rules, then five-year rules, and for many ten-year rules, during which time no help could be expected from the social welfare systems that served other citizens.

In this report we bring attention to a group of people who have been designated by the immigration control system as having ‘no recourse to public funds.’ Anyone thinking that this might be a reasonable restriction to place on temporary residents, like tourists, international students, and workers coming for fixed periods of time, might be surprised to find out that it makes its deepest and most damaging impact on people who are here on routes that lead to settlement and citizenship, and who are often absorbed in the task of raising young children. For this group the effect of having no recourse to public funds is not merely to remind them that their stay in the country is time-limited but often deprives parents and children of the basic essentials of life, such as secure accommodation, decent clothing, and even food itself.

The central criticism that we make of British immigration system is, in this context, that it has virtually no capacity to ensure even a minimal safeguarding of the right of people to a decent standard of life. Furthermore, it does this for a group of people of whom it is known are inherently at risk of hardship which at its worst extremes is expressed as sexual exploitation, labour exploitation, including the risk of slavery, as well as other forms of extortion by unscrupulous landlords and loan sharks<sup>9</sup>. Indeed, the dependency on the partner with

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<sup>9</sup> Cf. Price, Jonathan, and Spencer, Sarah. 2015. “Safeguarding Children from Destitution: Local Authority Responses to Families with ‘No Recourse to Public Funding.’” Oxford: COMPAS.

secure residence status, that is created by the NRPF policy restriction has been identified as a key factor precipitating and reinforcing domestic violence against migrant women who are subject to this condition.<sup>10</sup>

Children being raised by immigrant parents who are subject to no a NRPF condition experience these forms of hardship first hand, in some cases for a significant period of time. Poverty leaves deep scars and though adults might face up to it with fortitude and resilience, it often harms young people in ways that they might never recover.

### **1.3 The changes we need**

In the report that follows we make the case for scrapping the NRPF policy as it applies to people with leave to remain the UK. The effect of such a measure would not be, as it might be claimed in the tabloid media, to immediately grant a welfare benefits to every foreign national in the country. Contrary to the prejudices which exist in this area, most immigrants in the UK are earning incomes that in any event lift them above the threshold that would make them eligible for means-tested benefits, such as Universal Credit (replacing the previous Income Support, Housing Benefit, or Child Tax Credit).

For those people earning incomes that fail to secure the standard of life considered normal, we argue that they should be eligible for the full-range of welfare benefits that would be available to people settled without immigration restrictions to public funds. Bringing migrants within the scope of social protection available to others is critically important if we are to tackle the issues of integration and equality in ways that would facilitate the full participation of newcomers in the life of the communities in which they are settling in. This is an urgent task for anyone committed to social justice and to gender and race equality.

Even so, under the current structure of immigration control system, there would remain groups of people who are still at risk of the severest forms of hardship. The evidence we draw on for this claim comes from the work of local community-based support organisations which work with migrants whose route to a secure residence status is likely to remain blocked for many years, but who in the meantime are in situations of destitution which urgently need to be relieved.

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<sup>10</sup> Creswick, Helen Emma (2016) 'Women under the radar': The intersection of migration and domestic violence explored through the framework of '(un)deservingness', Thesis submitted to the University of Nottingham for the degree of Doctor of Philosophy November 2016  
<http://eprints.nottingham.ac.uk/41494/1/THESIS.pdf>

For this we argue that decisions about the balance of risks to which they are exposed, and the question of their immigration status should be in the hands of a competent welfare authority which has the power to direct the Home Office to issue residence permits and the access to have recourse to public funds. The details of our proposal on this point are set out in part 7 of this report.

Ending the no recourse to public funds policy and establishing a competent authority which can rule on the needs of exceptionally vulnerable migrant groups are essential steps that need to be taken if we are to end destitution and the risk of exploitation which is currently the reality that is faced by too many people. What we have learned from the revelations of the hostile environment and its impact on migrant groups should encourage us in the view that closing the gap between immigration system and safe-guarding the welfare of vulnerable people is now an urgent task that should not be delayed any further.

We welcome the interest of everyone in this area of social policy and look forward to engaging as many as possible in campaigning to bring about the end to the destitution of migrant people.

## Section 2: Policy impact

### 2.1 Poverty, Migrants, and the NRPF policy

The number of people living in hardship and at risk of destitution in Britain has been growing at a rapid rate in recent years.

The Joseph Rowntree Foundation (JRF) report on destitution in the UK in 2018<sup>11</sup> has set out its estimate that 1,550,000 people, including 365,000 children, were destitute in the UK at some point during 2017. The definition of destitution they use is that, at the point in time in question, the individuals concerned could not afford to buy the bare essentials needed to eat, stay warm and dry, and keep clean.

The vast majority – around 68% of the total – having to deal with destitution are people born in the UK whose difficulties have arisen because of the effects of, as the JRF report says, “the crushing effect of multiple debts, and harsh recovery practices on the part of public authorities [...]” It goes on to say that gaps, delays and freezes with regard to the payment of welfare benefits, together with sanctions for alleged failure to comply with the requirements of the system, are key triggers to destitution.

The JRF report tells us that 75% of people who have experienced destitution are British citizens, who, at least in principle, have access to a social security system which is supposed to provide a safety-net for people during times of hardship. But one-quarter of those who lived in destitute circumstances during the period looked at in the report were people who have moved to Britain from other countries. Foreign-born residents of the UK only make up 14.5% of the overall population. Because they make up 25% of those experiencing destitution we have to be concerned that there are factors operating within British society which greatly increase the risk of hardship to people who come into the country as migrants.

To get this matter in perspective, the chances of experiencing this level of hardship is many times higher for people born outside the UK than it is for native citizens. The JRF figures suggest that one in every twenty-four people who were born abroad experienced destitution

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<sup>11</sup> <https://www.jrf.org.uk/report/destitution-uk-2018>



in 2017.<sup>12</sup> This points to the existence of very high-risk factors operating for this group of UK residents.

Other JRF research has provided understanding of the reasons why extreme poverty is found so often among migrants resident in Britain. In an analysis published in 2016 researchers pointed to factors relating to labour market conditions, prices and the cost of living, public services and public finances and the specific ways they impact on foreign-born residents as factors of critical importance in producing higher levels of poverty.<sup>13</sup>

## **2.1 Impact of destitution on migrant families**

Destitution has a devastating impact on everyone who experiences it, and none more so than families that have the responsibility for raising children. Many people will therefore feel some surprise that an important area of immigration laws are voted in the full knowledge that it will impose conditions of extreme poverty on a group of migrants which, far from being temporary in nature, is intended to last for as many as ten full years. The NRPF policy is an example of this reality.

This report looks at the predicament of these families affected by the NRPF condition and the hardship they are made to experience. It argues that the measures which deliberately deprive a group of people living on low incomes from the support considered to be the norm in British society is a part of the basket of policies which government has used to create a 'hostile environment' as an instrument of immigration control. This policy makes the route to permanent settlement in the UK nothing less than a drawn-out obstacle course in the full knowledge that, for many migrant families, their day-to-day lives will be beset with hardship and deprivation. It is the contention of this report that the objective of this approach to the management of immigration is to break the will of people who wish to exercise rights to remain and persuade as many as possible to abandon efforts to make a life for themselves and return to countries of origin.

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<sup>12</sup> According to the Office for National Statistics, 9.2m people living in the UK in 2016 were born abroad – 14% of the total. The JRF report estimates that in 2017 375,000 born abroad people experienced destitution – one in every twenty-four.

<sup>13</sup> <https://www.jrf.org.uk/report/impacts-international-migration-poverty-uk>

The evidence from migrant support organizations suggests that very few will respond to this government-instigated hostility by voluntarily abandoning their rights to remain. The cases we report on show that people who migrate are often aware that migration will entail many challenges. Contrary to many of the myths that pervade the issue of migration, people do not migrate because they expect a particularly easy life in the country they come to call home. If they remain in spite of everything that is pitched against them, it is because of the hope that so many have that it will be their children who will get the benefit of the path they have chosen for themselves.

Our argument is that the fact of migrant resilience in the face of hardship is no reason to make things even more difficult for them, and to pile on even greater risks that come from poverty and being pushed to the margins. We should return to viewing poverty as we once did as one of the great evils of our time, with the duty to combat it through active social policy as one of the most pressing obligations which is assumed by government.

For the people at the heart of this report, the obligation to fight poverty means, first and foremost, abolishing the No Recourse to Public Funds condition.

### **2.3 The benefits and services which migrants who are subject to NRPF cannot access**

People whose immigration status includes a 'No Recourse to Public Funds' condition are unable to receive the benefits and services listed below. They will also be ineligible to access Universal Credit which is in the process of being introduced in the UK under the Welfare Reform Act 2012 to replace 6 of the means tested benefits (Income Support, CTC, WTC, Housing Benefit, ESA, JSA) I have highlighted these in yellow).<sup>14</sup>

Attendance Allowance, Carer's Allowance, Child Benefit, Child Tax Credit, Council Tax Benefit, Council Tax Reduction, Disability Living Allowance, Housing Benefit, Income-based Employment and Support Allowance, Income-based Jobseekers Allowance, Income Support, Personal Independence Payment, Severe Disablement Allowance, Social Fund Payments, State Pension Credit, Universal Credit, Working Tax Credit, Local authority housing provided under the Housing Act 1996 (and equivalent in Scotland and Northern Ireland) and housing provided by housing associations via the local authority rehousing list.

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<sup>14</sup> <http://www.nrpfnetwork.org.uk/guidance/Pages/default.aspx>

## **Section 3: Migrants at risk**

### **3.1 Which migrants are vulnerable to poverty and destitution?**

Not all migrants are exposed to the same risks of poverty and destitution. Many of the people moving between countries are relatively financially secure people who travel as students from families who can afford to pay the high fees for their college courses, or as people pursuing professional careers. Just under one-half of the long-term migrants who come to the UK each year are from member states of the European Economic Area, who, in principle at least, benefit from a wider range of social protection by virtue of the 'equality of treatment' provisions of European treaty law while the UK is still a member of the EU.

### **3.2 Greatest risk**

However, there is a pooling effect of risk for international migrants which tend to concentrate hardship among people who share the following features.

- migrants from countries with substantially lower average incomes for the majority of citizens, which often means racialized migrants
- migrants who although they might be well-educated and have skills which make them eligible for employment in the UK, have little in the way of savings or other assets that can be called upon during difficult times.
- migrants that are accompanied by dependent family members – particularly children.
- migrants are women – a point we will elaborate on during the rest of this report.
- migrants experiencing domestic violence and violence against women and girls
- single parents
- migrants with disabilities
- migrants caring for family members with disabilities

All these factors, taken together, indicate that some migrants are particularly vulnerable to the sorts of adversity which citizens are typically able to address because they have assets, social networks, and entitlements to the range of public benefits and services available to help meet costs intended to meet child support, housing and periods of low or no income. When social support networks are weak, or already overburdened, and where the individual experiencing hardship has no rights to access welfare and public benefits, then a period of temporary difficulty can rapidly escalate into deepening hardship which very soon becomes destitution.

### Case study

Shireen, from Bangladesh, came to the UK to join her British husband in 2013. She was given five years leave to remain, subject to a NRPF condition. A child, Asif, was born in 2014. Asif is a British citizen.

In 2015 Shireen left her husband because of his violent behaviour to her. She has a qualification as a bookkeeper but was unable to work full-time because of her caring responsibilities to her son. She is still subject to a NRPF condition until at least 2020.

She manages to earn around £250 a week doing accounts for small businesses but her rent for a one bedroom flat is £700 a month, meaning that she often has less than £300 a month for food, clothes, toiletries, heating and electricity for herself and her son.

Because Asif is British she can get Child Benefit for him. But she is denied important help from Housing Benefit, Council Tax Benefit and Child Tax Credit because she is subject to NRPF.

### 3.3 The 'hostile environment' policy

The Home Office has attempted to represent its hostile environment policy as something that only affects people whom it considers to be 'illegal migrants'. But it is known that its real effect extends beyond individuals whose residence status is not provided for by the immigration rules.

Organisations working with immigrants have criticised the government department for working with 'a culture of suspicion' towards all migrants, working with the presumption that they are likely to be illegal if they are not able to provide acceptable evidence that they are entirely within the law with regard to their immigration status. It was this approach to managing immigration that produced what came to be called the Windrush Generation crisis in the first half of 2018.<sup>15</sup>

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<sup>15</sup> See the Parliamentary Briefing prepared by 77 organisations supporting the Movement Against Xenophobia's lobbying against the Immigration Bill 2013/15

### **The Windrush Generation crisis**

**In late 2017 and into the spring of the new year, the Guardian newspaper began carrying reports of elderly people of Commonwealth Caribbean background who had been resident in the UK since the 1960s who were experiencing severe difficulties in their dealings with the Home Office.**

**Immigration law since 1971 had provided that people from Commonwealth countries legally resident in the UK at 1 January 1973 were to be considered as having indefinite leave to remain. However, the Home Office had for a number of years taken to challenging the eligibility to this status for people who were unable to provide the standard of proof which it required.**

**The Windrush generation found that life was being made increasingly hard for them by the withdrawal of rights to work, to rent accommodation, to receive welfare benefits, and to use the services of the NHS.**

**In some cases, people were arrested and held in detention centres and threatened with deportation. This happened to a group of people who had spent considerable time in the UK, some of whom were citizens, and most of whom did not see themselves as ‘migrants’ but as established members of this society. While the numbers affected are unclear, they surpass 5000. This is the practical effect of ‘hostile environment.’**

The people who are at the heart of this report are in an immigration category that allows for their eventual permanent settlement in the UK, and after that to receive full British citizenship. Our charge is that the imposition of a NRPF policy is intended to make the completion of this journey as difficult as possible, and to force as many people as possible to abandon their efforts and return abroad.

This is why we say it is part of the ‘hostile environment’ strategy. If it is the case that the revelations of how abusive this approach has now turned out to be, forcing the hand of a new Secretary of State and the entire Home Office to reconsider its position, then the position of families made subject to NRPF ought to be abandoned alongside the hostile conditions that were imposed on other migrants.

### **Section 4: Supporting migrants at risk**

The accounts given in this report are drawn from the experiences of community-based migrant support groups. Organisations of this type have been emerging in recent years to meet the need for advice and support from people within migrant communities.

#### **4.1 The role of community-based organisations**

The deeper origins of community-based migrant support organisations go back to the late 1990s when central government began dispersing asylum seekers across the country to wait out the period whilst their applications were under consideration. Often in areas with very few legal professionals with expertise in immigration law and policy, the support groups responded with a variety of strategies which included the provision of advice but also aimed at mobilising wider civil society solidarity networks. Over time these groups became increasingly proficient in guiding the people they were assisting through the complexities of immigration policies and also ameliorating the hardships which people were experiencing as they waited for the Home Office to process their claims.

By the mid-2000s the problems experienced by many asylum-seekers were becoming general across wider groups of migrants. Changes to the regulations around the provision of legal aid which reduced the amount of funding available to individual cases led to a substantial decline in the availability of professional legal advice. This meant that the services being provided by the not-for-profit, voluntary community-based organisations became more central to the provision of advice and support.

Community-based organisations are concentrated in parts of the country where migrants are settled in significant numbers, and where awareness of the prevalence of hardship and destitution within these communities has become general across the local area. With organisations of this type as the principal sources of information, the experiences of migrant communities in the cities of London, Birmingham and Manchester form the bedrock of our report.

#### **4.2 Limitations of community organisations**

One of the effects of a structure for providing advice to people about their rights which is increasingly dependent on the work of volunteer bodies, is that it introduces a bias towards particular communities based on the circulation by word-of-mouth of the existence of such services. The groups which have provided the evidence on which this report is based all operate on minimal levels of funding, with most of their income going towards the welfare and legal costs of the people they are assisting. They are very poorly resourced in important areas like the publication of material to promote their services, or the provision of translation for people whose first language is not English. Because of this, the experiences we draw

most heavily on, relate to migrant groups with a high level of competence in English and who also have long-established and well-developed information networks which can point members of their communities to advice services (ie African and Caribbean communities). Because of this the experiences of these migrant communities are more prominent in the accounts in this report. But it would be a mistake to believe that hardship arising from the NRPF policy is not also widespread among other large migrant communities. Further information from organisations working with Asian, Latin American and non-EEA European nationals is needed to properly assess the extent of poverty that arises from the NRPF policy.

Because of the confusing and complex nature of the NRPF policy, an important problem faced by migrants is to access quality and reliable advice and support. For example, it took Elaine four years to find an organization who could advise and help her.<sup>16</sup>

#### **Community-based advice organisations and the people they support**

**Haringey Migrant Support Centre (HMSC) was established in 2012. Around that time, evidence started to build, of a significant need among local communities for advice relating to their immigration and related matters. Swingeing cuts in legal aid were leading to the withdrawal of local immigration solicitors. At the same time the increasing complexity of the rules around visas, residence permits and nationality procedures was throwing more and more people from migrant communities into doubt about where they stood in relation to the law.**

**HMSC receives funding from independent trusts and foundations such as the Henry Smith Charity, City Bridge Trust and Trust for London, amongst others, in order to meet the need for advice and support for nearly 900 migrants a year. Its advice service is run by a skeleton of paid staff, supported by unpaid volunteers who have been trained in areas relating to immigration law and policy, housing and social welfare matters, and domestic violence.**

**The Centre estimates that 53% of the cases it deals with involve clients who have no recourse to public funds.**

**“The effect of granting public funds benefits to the people who come to our centre would resolve a large proportion of the hardship they experience. For families that are raising children who either are or will one day become British citizens, the levels of poverty and insecurity they have to face is overwhelming. It also runs contrary to what good policy ought to be if we want to see the inequality and the marginalisation of communities ended in our society.”**

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<sup>16</sup> Erel, Umut, Maggie O'Neill, Tracey Reynolds, and Erene Kaptani (2017), "[Crisis upon Crisis: Migrant Families with No Recourse to Public Funds](#)", Discover Society.

## Section 5: Immigration categories and risk of hardship associated to NRPf policy

### 5.1 Routes into NRPf

In practice, the 'no recourse to public funds' condition is imposed on almost all migrants granted limited leave. For example, partners, spouses, children, parents of a child in the UK and adult dependent relatives all have the condition imposed on their leave in all cases. There are some limited exceptions. For example, if leave was granted on the basis of private life and long residence (ten years lawful or 20 years if wholly or partly unlawful).

Experiences reported by collaborating organisations set out three main categories of cases:

#### *Case One: Person granted limited leave as a family member of a person settled in the UK*

It can be expected that issues of hardship arise for many people in this category if the family experiences periods of low income. This will be even more so when children are born to the family.

Community advice organisations report that problems of hardship are exacerbated in cases when the relationship between the adults in the family breaks down and they separate. The partner with limited leave will most probably experience difficulties to have his leave reviewed in this situation, unless they can establish a right to remain on other grounds. This will happen if a child has been born to the relationship, and that child has British citizenship. If the partner (typically the mother) is left with the responsibility to care of the child, or children, then she will be in a position where she can apply for limited leave to remain as the parent responsible for the care of a British child. The NRPf condition will normally continue to apply until such time as the person is granted indefinite leave to remain.

In many cases, including those whereby immigration status is not an issue, having to get by as a single parent will entail hardship, persistent poverty among single parents was at 20% in 2015<sup>17</sup>. For a lone parent with British citizenship or a permanent settled status this will be ameliorated by having the right to access a public funds benefit. In this case the parent would be able to claim Child Benefit, Child Tax Credit, Housing Benefit, and Council Tax Benefit. None of these are available to a lone parent who is subject to a NRPf condition.

#### *Case Two: Limited leave to remain as the parent of a child with residence rights*

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<sup>17</sup> <https://www.jrf.org.uk/data/persistent-poverty-family-type-2008-2015>, accessed 2 July 2018



The immigration rules provide for the grant of leave to remain in the UK to a parent or parents who are caring for a child or children who have the right to reside. The idea is to review the applicants circumstances by examining applications by blocs of 30 months until ten years of residence have been accumulated. In such scenarios, the NRPF condition will be generally applied. On reaching 10 years of lawful residence, the parent will be able to apply for indefinite leave to remain.

There are several routes by which a child can acquire a right of residence. The most clear-cut is when s/he is acknowledged as being either a British citizen or a citizen of another member state of the European Economic Area (EEA). British citizenship would be acquired when the child is born in the UK to one parent who is themselves a British citizen or who was settled at the time of birth. In these circumstances the parent with responsibility for care would be entitled to claim Child Benefit (which is paid as an entitlement due to the child rather than the parent) but not any of the other benefits in the list of benefits considered as public funds. EEA nationality might be obtained for a child by several routes. These include birth in another member state of the EEA, or by descent from a parent who is a citizen of an EEA country.

#### **Case example – The mother of an EEA national**

**Maryam is a citizen of Cote d'Ivoire. She lived for a number of years in France where she had a son, Ibrahim, from a relationship with a French national. Ibrahim is a French citizen.**

**Maryam moved to Manchester with Ibrahim in 2014 to be closer to family members who were settled there. She has a job as a caterer in a local hospital but can only work on lunch shifts for three hours a day because of Ibrahim's school hours. She earns just over £100 a week from this job. She also works an eight hour shift in a supermarket over weekends, when her sister can look after Ibrahim, bringing her income up to £160 a week. After paying rent of £80 a week she struggles to meet the cost of groceries, replacing items of clothing, and gas and electric bills.**

A child might also acquire a right of residence without having either British or EEA citizenship if s/he has lived in the UK for a certain period of time. This provision exists in the immigration rules because to protect a right to private and family life, protected under article 8 of the ECHR. The courts have ruled that disrupting a lengthy period of residence by sending a child to a country which s/he is not familiar will not in many circumstances be in its

best interests.<sup>18</sup> The obligation to consider the best interests of the child derives from the Children Act 1989, which states that:

*'In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.'*

Many parents who have been given limited leave to remain under this provision are likely to acquire the right of permanent residence after they have accumulated 10 years in the UK.

A final example of a child who has been granted a right to remain, in circumstances where they are neither a British or EEA national or have lived in the country for seven years will arise when it has been established that the child cannot be returned to the country of its parents because of the risk of being subjected to cruel and inhumane treatment protected under article 3 of the ECHR. There may be grounds for considering that this might be the case e.g. in the instance of a girl child who would be subjected to female genital mutilation in her parent or parents' country. Once again, the parent of a child granted residence on this basis would be given leave for to remain which will most likely have an NRPF condition attached to it.

#### *Case Three: Parents caring for children who have made applications for leave to remain*

The examples cited above all concern parents who have been positively granted leave to remain in the UK, albeit for a limited period. The third category which needs to be considered is that of the parent who has applied on behalf of a child for leave to remain, but whose application is still under consideration by officials at the Home Office. The experience of community-based support organisations is that decisions on applications are seldom made in less than six months. A refusal is likely to attract a right of appeal, and the applicant is granted a very limited form of leave, which still prohibits employment and a NRPF condition, until that is finally disposed of – anywhere between six months and a year after lodging an appeal.

The difficulty experienced by this group of parents is that, as well as being subject to a NRPF restriction they are also not able to take any form of employment or self-employment until such times as the Home Office has decided to grant limited leave to remain. Applicants

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<sup>18</sup> See Coram Children Legal Centre Migrant Children's Project FACT SHEET *Best interests of the child in immigration and asylum law* for a discussion of UK case law on these issues  
[https://www.childrenslegalcentre.com/wp-content/uploads/2016/10/Best.interests-May-2017.final\\_.pdf](https://www.childrenslegalcentre.com/wp-content/uploads/2016/10/Best.interests-May-2017.final_.pdf)

are expected to get by on whatever resources they have outside of an earned income. Whilst instances of hardship are to be found among all groups discussed here, the worst effects, typically involving long periods of destitution, is to be found among people in this final category.

#### **Case example**

**Ifua came to the UK in 2008 to visit family members settled here. During the time of her six month tourist visa she had a relationship with a man and became pregnant. She overstayed her tourist visa and gave birth to her daughter, Comfort, in the summer of 2009. Comfort's father was not a British citizen which meant the child had no claim on British citizenship at the time of her birth.**

**Ifua felt she could not return to her home in Ghana. Her father earned a small income as a street trader in their home town. He was already supporting her mother, who suffered from long-term sickness, and five other children. She felt she could not burden her family further with herself and another small child.**

**Mother and child became dependent for their support on a network of family and friends, mainly based on church circles. She earned a small cash-in-hand income from childminding. On two occasions she entered into relationships with men who provided her and Comfort with accommodation and food, but these periods lasted for only 9 months and 7 months.**

**After seven years of constant hardship she was able to make an application for Comfort based on her length of residence. She was joined to this application as the parent caring for a dependent child. The Home Office said that her application raised 'complex issues' and said a decision would be made in due course. During all this time she had no right to work or receive any welfare benefits.**

## **Section 6: Living in hardship**

The community-based organisations who have provided evidence for this report see NRPF policy as having their most severe impacts on women and their children from communities which experience hardship arising from the experience of a starting point of poverty, gender disadvantage, and the institutional racism of immigration control policies.

In the following we give an indication of the ways in which this hardship arises and the ways in which it is made worse by immigration control policies.

## 6.1 Poorest migrants experience maximum disadvantage

By and large the immigration control systems that operate in developed countries are designed to facilitate the movement of people from the richest regions of the world, and to generate obstacles for those coming from the poorest.

In limiting migration opportunities to people from rich countries, the potential role that the movement of people has in reducing poverty and inequality between developed and less-developed parts of the world is greatly restricted. Despite the gains for human welfare that would come from allowing more poor people to participate in migration, the dominant systems for managing the movement of people have kept this at very low levels until comparatively recent times. For example, up until the turn of the millennium, less than 10,000 people from the countries of sub-Saharan Africa were permitted to enter the UK each year.

This has meant that huge pressure has built up within global society for the creation of more opportunities to migrate for a wide range of reasons, including refugees fleeing endemic violent conflict, and economic reasons on the part of generally well-educated people with few opportunities for gainful employment in their own countries. By the mid-2000s the numbers of people from poor countries began to rise primarily because humanitarian crises were pushing more people into migration, but also through increased opportunities to move, e.g. as international students.<sup>19</sup> Whilst this facilitated a higher volume of people being able to gain initial entry, the rigid approach taken by national authorities to managing migration post-entry meant that larger numbers were falling into situations marked by irregular and undocumented residence.

Normal life is not suspended during periods when migrants encounter difficulties with their status. They continue to form relationships, which may give rise to children and obligations to care for them come to be the overriding concern of individuals. Yet the tension within immigration policy arises because of reluctance on the part of government to acknowledge the inevitability of a strand of migration in which people acquire rights and to put into practice policies which assist people.

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<sup>19</sup> According to Universities UK the number of international students enrolled in higher education in the UK has increased by 28% since 2007/8. [https://www.universitiesuk.ac.uk/policy-and-analysis/reports/Documents/International/International\\_Facts\\_and\\_Figures\\_2017.pdf](https://www.universitiesuk.ac.uk/policy-and-analysis/reports/Documents/International/International_Facts_and_Figures_2017.pdf)

These are the range of problems which arise from this failure to respond to the needs of people with responsibility for raising children.

## **6.2 Years of hardship**

The destitution experienced by vulnerable migrant communities can be of long duration. A person admitted as a family member of someone settled in the UK will normally be subject to a NRPF condition for the duration of their leave. The advantage this person has is that, in most cases, they will be part of a two-adult household with both adults being free to take employment. However, even here the experiences of couples whose only options for employment is in low-paid sectors where job opportunities are episodic and periods of unemployment inevitable, should not be ignored. Without access to the welfare benefits intended to reduce hardship for people in low-paid work and who frequently have high housing costs is severe. We know that poverty is increasingly a problem for people in work. In 2017, 3.7 million workers lived in poverty and among the 12 million working-age adults and children in poverty, 8 million live in families where at least one person is in work.<sup>20</sup> In addition to this, families will clearly suffer a penalty for having family members on whom a NRPF condition is imposed which others in an identical situation will not have to endure. A family consisting of two adults and two non-British children with a gross income from employment of £22,000 a year and housing costs of £800 a month would be in the region of £160 a week worse off because of non-entitlement to Child Tax Credit, Child Benefit, Housing Benefit alone.<sup>21</sup> It will be only after five years, when an application for indefinite leave to remain for the non-British dependents can be lodged, that the hardship of this family can be relieved.

In the event that the marriage breaks down and the non-British family member is left with the care of the children it can be expected that the experience of hardship will escalate to crisis levels. Employment opportunities for the parent caring for the children are likely to be reduced because of the need to work around the hours when child care can be arranged or to fit in with school hours. Additional problems might arise if the Home Office fee for processing an application for further leave to remain cannot be raised: for the adult plus two children in the case above, these fees would amount to £6,099 – made up of £1,033 for each application plus £1000 for each application for the Immigration Health Charge. Though there is the possibility that the Home Office will agree a fee waiver if evidence is provided that it is beyond the means of the applicant to raise the amount, this will have the effect of

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<sup>20</sup> P. 2, Summary. UK Poverty 2017, JRF Analysis Unit, <https://www.jrf.org.uk/report/uk-poverty-2017>, accessed 2 July 2018

<sup>21</sup> Calculated using the entitledto online benefits calculator [https://www.entitledto.co.uk/?utm\\_source=BAviser&utm\\_medium=referral&utm\\_campaign=GovUK](https://www.entitledto.co.uk/?utm_source=BAviser&utm_medium=referral&utm_campaign=GovUK)

extending the period to the point where indefinite leave to remain can be applied for from five to 10 years, and potentially the period of being subject to NRPF as well.

For the parent of a British or EEA national child who had not been admitted to the UK on a family visa the period of time before settlement can be obtained, will generally be 10 years. During the course of this time the parent will have to make three applications – one every 30 months – for a renewal of further leave up to the 10 year point. The immigration rules assume that a person in this situation will be subject to NRPF throughout the 10 year period. The basic fee (at the rate in 2018) for the leave application of £1,033 plus £500 for the Immigration Health Charge, in cases where it is required, would have to be paid at each point when the further leave application is made.

#### **Case Study**

**Samira is a Pakistani national and the mother of a Swedish national child. She came to the UK with her Swedish national husband, but he abandoned her and Tariq, their four year old son, and returned abroad. She applied for further leave on the basis of being the mother of a Swedish child, and the Home Office granted this after a six month delay. She had to pay a Home Office fee of £1,033 for herself, plus and Immigration Health Charge of £500 – totalling £1,533. Fortunately she did not have to apply for leave for Tariq because his Swedish nationality means that he has an automatic right to reside in the UK.**

**Samira is able to work for 25 hours a week as a cashier in the local post office because the hours she has been offered fit in with Tariq's school times. But her gross wage of £250 a week, with a rent of £750 a month, means that she is constantly short of money for groceries and other essential items. She regularly has to resort to food banks and free meals at her local community centre to get by.**

But there are many examples of even longer periods of time before a parent can reach the point where the NRPF condition is lifted. The most common is the case of the person who became a parent when she was living in the country without leave from the Home Office. Under the current provisions of the immigration rules this parent would have no public funds entitlement, and neither would they be entitled to work. The mother who felt that she was for any reason unable to leave the UK with her child to return to her own country would have to find a way to survive through forms of employment which are considered illegal, and also through any help she might be able to obtain from networks of friends and family.

It is amongst this group that migrant support organisations report the severest cases of destitution. Years of moving between very temporary arrangements for accommodation, with accounts of mothers sleeping with their children on sofas and armchairs for as long as a

friend is willing to tolerate the arrangement, are all common experiences. In one case, reported by a support group in north London, a mother described how she resorted to sleeping on public transport buses with her young son during times when she could not find a friend who would let them sleep over.

The great majority of these cases involve women who come from the poorest of backgrounds. They endure this level of hardship because they believe – usually with good ground – that any alternative course of action involving a return to the country they came from, would leave them and the children they are caring for in an even worse situation. They bolster their hopes by reminding themselves of the prospect that, years down the line, they will be able to make an application for leave to remain which has a good chance of succeeding. In the meantime they care for their children as best they can and try to ameliorate the worst of the effects that their situation might have on their well-being, happiness and development.

### **6.3 What can be done in the most vulnerable of cases?**

The paradoxical situation of the most vulnerable of migrant families in the UK arises from the fact that, although the law makes it clear that the interests of children always has to be the highest priority in an area of social policy, the practice in immigration control is to withhold a secure residence status from any child not a British citizen, even if they were born in the country, until they have been here for seven years. This means that throughout the time it takes to reach this seven year point, the normal procedures for providing for the welfare of the children of immigrant families are suspended for this group of children.

However, the courts have held that the obligation to consider the best interests of the child exists even before the seven year point is reached. What is lacking is clear direction on what this means for the statutory bodies responsible for safeguarding children's interests, especially local authority social services departments. There is a compelling case for the complete overhaul of guidance for social work professionals and their role as a body which has the authority to intercede in all cases involving children, and to give directions to the immigration authorities as to the status that should be extended to the children and their carers.

To remedy this, we call for a new system which takes decisions about the status of these vulnerable families out of the hands of the Home Office and gives this authority to a professional body operating in the neighbourhoods where they live. With the obligation to

consider the needs of the child first and foremost this child protection body will have the power to direct the Home Office to issue rights of residence to children and their carers wherever this is justified by objective consideration of their welfare needs.

**More on this is set out in Section 8 ‘What Needs to be Done’.**

#### **6.4 Children – will disadvantage become permanent?**

The experience of poverty in the formative years of an individual’s life invariably has effects which last across time. Parents who are required to work long hours in poorly-paid jobs will be hard-pressed to find the time to provide the emotional and nurturing support children need. Migrant support groups report how often a mother, juggling her time between two or more jobs, will depend on her older children to look after the younger, or for unregistered childminders to pick them up from school and provide evening meals.

Children wearing poor quality clothes and seeming to be permanently hungry come to the attention of teachers who may feel it is necessary to inform local social services departments about possible neglect. Sharing beds with siblings, and sometimes with adults, will mean that a child will be deprived of the sleep she needs, leading to inattentiveness at school and poor work during lessons. Lack of space in crowded accommodation creates difficulties for older children who are required to do homework. Groups working with migrant families report the common experience of children not getting on well at school becoming the object of bullying by their peers.

Housing insecurity due to dependency on short-term private sector renting will mean that a family living in conditions of financial hardship will be frequently moving home. When this involves moves of some distance the children will inevitably have to contend with long journeys to school or may have to change schools. The challenges that young people face in having to fit into new settings and networks of fellow students can be daunting for many. All the factors considered above will combine to create tremendous difficulties for children who are striving to reach their full potential in education.

The current crisis of stalled social mobility, which the government has felt to be so serious as to convene a commission of experts to address the issue,<sup>22</sup> has meant that relatively few people over the course of a lifetime are able to improve their life chances above that of their

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<sup>22</sup> See the government website on the Social Mobility Commission  
<https://www.gov.uk/government/organisations/social-mobility-commission>



parents. People raised in conditions of poverty today have a less than one-in-five chance of escaping it in their adult lives. This has alarming implications for migrant families whose experience of hardship has been reinforced by official policies which require them to live at levels close to destitution. Fated by their circumstances to do the same sort of work as their low-paid parents and to resort to the high-cost, low-quality private rented sector for their accommodation, the children of migrants run the severe risk of never over-coming the disadvantages that their mothers and fathers had to face. Public policies which aim to facilitate the integration of newcomers will flounder as they fail to compensate for the disadvantages created by immigration status, low wages, and expensive but sub-standard accommodation.

Improving the life chances of people who have been required to endure the most precarious of living conditions will require social policies that are joined up across all the factors which produce poor outcomes. But there can be no doubt that alleviating the greater risk of poverty that comes from being a migrant family that is required to subsist without access to the social security system available to the rest of the population is a key step that needs to be taken.

### **Section 7: Remedies to destitution within the system, and why they are inadequate**

As was shown in the revelations about the treatment of Windrush immigrants under the hostile environment policy, government has few qualms about using hardship and poverty as an instrument of immigration control. The belief that migrants should be deprived of the social support mechanisms that are considered normal for other people has been hardwired into the system and by policies supported by both Conservative, Labour and coalition governments over the years. This approach embodies the idea that immigration should exist as an opportunity for relatively wealthy groups of people across world society, with sufficient means to cover themselves against the risks of insecurity in labour markets and the high cost of housing, health care, etc.

## 7.1: The current limits of Section 17 support

In practice government has not had an entirely free hand in this area. The obligation to have regard for the welfare and welling of children under the Children Act means that a safety net offering some degree of support when the prospect of destitution is present has had to be established.

This exists in the form of Section 17 of the Children Act 1989, which imposes a 'general duty' on local authorities to:

- (a) *to safeguard and promote the welfare of children within their area who are in need;*  
*and*
- (b) *so far as is consistent with that duty, to promote the upbringing of such children by their families,*  
*by providing a range and level of services appropriate to those children's needs.*

However, exactly how this is done is not defined by law. In practice, each local authority, when they do have one, has designed their own NRPF policy. The arrange of practices adopted across the country to meet the requirement to provide this support extends from cash payments on or around the level of support provided to recipients of Asylum Support<sup>23</sup> to lesser, justified on grounds that the family can augment whatever payment is offered either through employment or by making greater use of charitable sources of aid.

Families who require the assistance of Section 17 subsistence payments often also need help with accommodation. Struggling to pay the cost of rent, alongside insufficient resources to pay for food, heating, essential clothing items and toiletries, is one of the defining features of the destitution which Section 17 of CA 1989 intends that local authorities relieve. Approaches for assistance from local authorities are often triggered by the imminent prospect of the parent with the care of children being made street homeless.

A report published by the Children's Society in 2016 looked into the position of families receiving Section 17 assistance. It reported research that found that almost two thirds (64%) of properties provided to children under Section 17 support in London as being unsuitable and falling short of "meeting the practical and emotional needs of the children and their

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<sup>23</sup> Asylum Support is paid by the Home Office to people with an application for refugee or humanitarian protection status under consideration. This is paid at the rate of £37.75 for each person in the asylum seeker's household. If the asylum application is refused but the person concerned unable to leave the country immediately the support will be continued at the low rate of £35.39 per person in the household.

principal carers.” Families often had to endure these inadequate and unhealthy conditions for prolonged periods of time. The study by the Children’s Society found that 40% of families whose circumstance had been considered had remained in this type of accommodation for more than six months, “allowing for these unacceptable housing conditions ‘to have a profound and sustained impact on a child’s life.”<sup>24</sup>

With regard to the amounts provided under Section 17 of CA 1989 to meet the need for nutrition, the same report found that the low level payments generally made available, combined with “often inadequate or absent cooking facilities in B&Bs and other types of unsuitable housing...” led to “food poverty”. Families made use of food banks but, lacking cooking facilities in the accommodation provided by the local authority, they were “... unable to cook healthy, nutritious food for young children .... and unable to buy a satisfactory amount of food for the family.” The report cites incidents of “...children going to school hungry, or with mouldy bread or a packet of crisps for their lunch.”<sup>25</sup>

Other migrant support groups report problems with the social services departments of some councils engaging in ‘gatekeeping’ practices which are intended to shield the local authority concerned from claims from impoverished families. Based on the experiences of one London support group, North East London Migrant Action (NELMA), a study of people approaching their local authorities with a request that the welfare needs of their children be assessed for Section 17 support found that 49% of the group (22 families) were refused even a screening interview intended to carry out an initial assessment of the existence of need. Contesting this refusal required a willingness to return to the department’s offices on repeated occasions to insist on consideration of an application for a ‘child in need’ assessment. The report cites the experience of one not untypical case, that of a mother called Ade, who went on five separate occasions to request an assessment she knew was hers by right.<sup>26</sup>

Two factors seem to shape the thinking of the social worker professional responsible for deciding on Section 17 support. The first of these is the existence of an immigration status which the social worker is implicitly invited to view as being problematic, if not actually irregular or, in the terminology of immigration enforcement, ‘illegal’. The second is the

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<sup>24</sup> See *Making Life Impossible: How the needs of destitute migrant children are going unmet* by Zoe Dexter, Lucy Capron and Lucy Gregg, The Children’s Society, April 2016, p.27.

<sup>25</sup> *ibid.* p. 28.

<sup>26</sup> See “*Why can’t you support yourself?*” *Constructing ‘irregularity’ through Section 17 support*, an unpublished academic dissertation by Michael Boyle, p.22.

developed sense that social services departments are beleaguered places – under siege from a growing population of hard-pressed and near destitute people. This mentality arises from large cuts to local authority budgets under the austerity measures imposed by the coalition government in 2012 and which continue today, which have seen between 20-30% reductions in the amounts needed to meet social need.

A sharp criticism of the practice of gatekeeping has arisen from within the social work profession, setting out ethical objections to excluding children in need from consideration under the undue influence of presumptions about immigration status. Writing in *Critical & Radical Social Work*, Natalia Farmer sets out the argument that:

*Within a hostile environment, welfare exclusion becomes a tool for controlling immigration and social workers assume the role of 'border guard'. In principle, while the language of child welfare legislation and policy remains the same and prioritises the duty to safeguard and promote the well-being of a 'child in need', in reality, immigration concerns overshadow.<sup>27</sup>*

There is a view widespread amongst migrant support organisations that obligations under child welfare conventions to consider the needs of children as the principal priority has been badly compromised by matters relating to immigration control. 'Gatekeeping' is seen as a legitimate response to applications for assistance from migrant families. People who have come to see their position as fraught with insecurity and capable of being challenged at any moment by any one of a variety of authorities, from employers, landlords, hospital staff and teachers at their children's schools as to their right to be here, have come to add social workers to this list of surrogate immigration officers. Advisors working for migrant support groups report chilling instances where immigration officials 'embedded' in social services departments have intervened in discussions with Section 17 applicants with the suggestion that the Home Office will look into their situation once again, with the implied threat that this will lead to the limited leave the person holds being revoked.

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<sup>27</sup> See 'No Recourse to Public Funds', *insecure immigration status and destitution: the role of social work?* by Natalia Jane Farmer, *Critical and Radical Social Work*, 5(3), 2017, pp.357-367.

### Case Study

During an interview with a social worker Lucy mentioned that the father of her son was Nigerian. The social worker then said that this called into question whether the boy, Jacob, was in fact a British citizen, as had been accepted up until that point. The social worker said that she would have to bring this to the attention of the Home Office to have clarified whether Lucy should have been granted limited leave to remain as the mother of a British citizen.

Lucy attempted to correct this impression by explaining that the father, although originally from Nigeria, was now a British citizen. The social worker looked sceptical and gave her the impression she would raise the query with the Home Office anyway. Lucy was deeply alarmed that this would return her case back to the time before she was given her initial limited leave to remain, when she was being accused by the Home Office of being 'illegal'.

In our view the prevalence of gatekeeping practices, and the extent to which local authority social services departments have become accommodated to a role which requires deferring to the judgments of the Home Office, shows that this approach to supporting the welfare of vulnerable families cannot be considered reliable.

We favour a complete overhaul of structures which exercise authority in this area, both on the part of the Home Office and local social service departments.

**It is time to establish a new welfare agency which has the explicit mandate to support the needs of vulnerable migrant groups in order to prevent them falling into destitution and the risk of exploitation by employers, landlords, unscrupulous legal advisors, and others. Working with a critical social work perspective this agency would have the power to intervene in all cases where this risk was found to exist, and to give directions to other bodies, including the Home Office, welfare benefit agencies, social services departments, the police service and other relevant bodies to take whatever action is required to limit the expose to risk. These directions might include to grant a residence permit, to provide accommodation of an acceptable standard, to pay a welfare benefit, or to initiate criminal proceedings against any third party found to be engaging in exploitation or extortion.**

### 7.2: Lifting NRPF

It is important to note that the Home Office provide for the possibility of lifting the NRPF condition for people who are on the 10-year route to settlement. This will happen when the individual concerned has demonstrated the following about her circumstances:

- That they are destitute, being homeless or unable to meet essential living need;
- That there are particularly compelling reasons relating to the welfare of a child on account of the parent's very low income.
- The person has established exceptional circumstances relating to their financial circumstances.

The procedure for having the NRPF condition lifted requires the completion of a form with the title Request for a change of conditions of leave granted on the basis of family or private life. It is available only to people who have already been granted limited leave to remain and will not therefore provide a remedy to anyone who has not yet made or is waiting for a decision on an application for leave to remain.

Migrant support organisations consider the procedure for making an application for change of conditions is challenging in that it requires people to make statements about their personal circumstances that are relevant to a decision to lift the NRPF condition, and to provide extensive evidence in support of these facts. The application form offers the following guidance on what will be needed to support an application:

It is up to you to provide sufficient evidence to satisfy the caseworker that you meet the terms of the policy. If insufficient evidence is provided, the conditions of your leave will not normally be changed.

You should provide evidence of your financial circumstances and living arrangements. This could include documents such as:

- Bank statements
- Savings account statements
- Pay slips
- Information about level of your rent and bills
- Tenancy agreement or mortgage statement
- Utility and other relevant bills
- P45 / P60
- Letter confirming employment (the person writing should state their position in the company and provide contact details)
- Letter from Local Authority confirming that support is being provided
- Letter from registered charity or other organisation providing support
- Letter from family or friends who are providing support

- Letter confirming that you or your spouse or partner is in receipt of public funds.

You will need to explain what your current financial circumstances are, how these may have changed, and how you are currently maintaining yourself.

It is often the case that migrants living in difficult circumstances will lack the confidence to make an application which requires this level of detail about their circumstances, backed up with the volume of documentary evidence that is expected. Many will live in areas where they cannot access free advice on how to proceed, even if they know that there is provision for having the NRPF condition lifted. Because of this, it can be expected that a high proportion of people living in destitution will not make the application or will make it in a form which does not satisfy the Home Office that it should grant this change of conditions.

The report of the Children's Society, cited above, states that in 2015 it had a 50% success rate in its efforts to support families in having NRPF conditions lifted.<sup>28</sup> A representative of the Unity Project, a voluntary organisation in London, estimated a success rate of 80% or more of the cases its supported in having the NRPF condition lifted during an interview for this project.

At one level this high success rate appears to show that the system is working because it does have the capacity to recognise destitution where it exists and take the appropriate action to provide relief. But this is to ignore the obvious flaws in the system. The most obvious of these is the fact that the NRPF condition will be lifted, but it requires access to an agency providing high quality advice and assistance for this to happen. Given the crisis in the availability of quality legal advice in this area we have to be concerned that only a fraction of the people actually living in destitution will be able to obtain the advice they need.

Another criticism is that the system imposes a version of a test of the resources and means available to migrant families in order to judge whether they should be granted access to public funds which in any event would be undertaken by more appropriate welfare agencies when the migrant becomes eligible to claim the benefits set out in the list of benefits considered public funds. With the exception of the small number of 'universal' benefits in the current public funds list, the majority are paid only on condition that the applicant established need which cannot be met from the resources which the applicant has available. The system would be far less cumbersome and much more efficient if all migrants with residence rights

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<sup>28</sup> The Children's Society op cit p. 17.

in the country who found themselves in hardship could access the same opportunities for benefits and services which are available to citizens and people with permanently settled status.

#### **Case Study**

**Agnes has limited leave to remain as the parent of a British citizen child. For the last several years she has been able to meet all the needs of her family from her earnings as an accountant. But a year ago she developed a serious health condition which meant she had to give up her job.**

**She was subject to a NRPF condition and had to get by drawing on savings and credit cards. After six months she had exhausted all her savings and was £3,000 in debt.**

**Now facing the prospect of being homeless for non-payment of rent, and having to rely on food banks and help from friends to buy food, she was successful in making an application to have the NRPF lifted on grounds of destitution, but only after a wait of a further two and a half months for a decision.**

**With the NRPF condition lifted she was able to make applications for Employment and Support Allowance and Housing Benefit which was able to stop her falling into deeper destitution.**

Our point here is that migrants who have been granted leave to remain should not have obstacles placed in the way of relief of destitution if this level of hardship has been proven to exist by the criteria that applies to citizens who are in the same situation.

### **7.3 Home Office fees**

People subject to a NRPF restriction will either be in the process of making an application for leave, or have a form of limited leave that entails either a five-year route or a ten-year route before they become eligible for a permanently settled status. Statement not quite accurate. NRPF also includes people who are undocumented and asylum seekers and failed asylum seekers, as well as those whose appeals rights exhausted.

Applications for limited leave involve payment of Home Office fee of £1,033 per person included in the application. A parent with one child will therefore be expected to pay a fee of £2,066; with two children £3,099; and each addition person adding a further £1,033.



In addition to the Home Office fee, some applicants are expected to pay an Immigration Health Surcharge (IHS), which is presented as being a charge for being able to use the services of the NHS. This has to be paid even if these services are not used. At the time of writing, the IHS is levied at the rate of £400 a year (£300 for people with leave to remain as students). Payment has to be made in full at the time of application for an amount that covers each year of the future period. An applicant applying for limited leave to remain of 30 months duration is required to pay an IHS of £1000. This amount also has to be paid for each

person included in the application. A mother with one child would therefore have to pay £1000 in addition to the £2066 Home Office fee; rising to £3000 if the application includes two children, and so on. The amount in total that the Home Office would require from a parent applying with two children would therefore be £5,066. At a constant fee level of £400 per year this means that this parent with two children would have to pay a total of £11,066 in fees if on the five-year route, at which point the applicant would have to pay £2389 as a fee for her own settlement plus £2389 for every dependent included in the application – a grand total of £18,233.

Based on these figures, a family on the ten-year route – also consisting of a parent plus two children – would pay over £50,000 in fees by the time it reaches the point of obtaining permanent settlement status.

The Home Office largely profit from these exorbitant fees. The cost for processing applications is disproportionate to the cost to the applicant. It only costs the Home Office £142 to process a limited leave application and £243 to process an ILR application. This gives the Home Office a 90% profit from the hardship they have placed on applicants.

Our point here is that the fees that people subject to a NRPf condition will periodically have to pay to the Home Office are set at exorbitant levels which would strain the resources of a family living on the average salary in the UK, estimated to be just under £28,000 a year. A large proportion of people on the five- and 10-year routes earn less than this, and particularly so for single-parent-headed families. Community organisations working with migrants report many cases where the struggle to raise the money to pay these fees itself leads to severe economic hardship and destitution. It is common to hear of cases where people have paid the entire fee on a credit card, entailing a substantial subtraction from their monthly income for years to come.

The Home Office does allow the possibility of agreeing a fee waiver for applications for further limited leave (but not permanent settlement) when destitution has been demonstrated. This will usually apply whenever a family is in receipt of Section 17 support from a local authority. However, because providing Section 17 support is such a contested area (see above), many families clearly living in hardship will not have a clear-cut case for having the fee waived. Examples where this has not been granted include when the family's income has only recently been reduced because of the wage earner being made redundant. In this case, the people concerned may well not have been eligible for Section 17 support because their earnings had been over the threshold for child-in-need assessment, but because the work was at minimum wages levels, would not have allowed savings being built up sufficient to meet the Home Office fees.

The family can still make a claim for a fee waiver at the time they are required to make an application for further leave to remain (not earlier than 28 days before expiry of current leave but no later than expiry date). This involves completing providing evidence of household income and outgoings. If the evidence is not considered satisfactory the fee waiver application will be refused and the family will have to pay the fee due within 14 days of refusal. Failure to pay the fee will result in the application being deemed invalid and the applicants will be considered to be overstayers. At this point, this will endanger their right to work, right to rent and other social and welfare rights.

Situations of this sort lead to a frantic search to raise the required money for a fresh application which, if the circumstances of the family have not changed on their essential points, will invariably be granted. However, this period of temporary overstaying will have the effect of re-setting the clock for the period in which the applicants become eligible for permanent residence. Community organisations report incidences where periods of several years accrued towards eligibility have been wiped out, meaning that the ten-year route becomes 12, 13, 14, or many more years before the family reaches the point of a secure residence status.

The matter of fees also arises in situations where children within the family become eligible to register as British citizens. There are many different routes to register a child as British. It arises when a child born in the UK to non-British parents who were not themselves settled at the time of the child's birth. A common registration route is when a child has accumulated 10 years of continuous residence in the UK subsequent to his or her birth. This citizenship is available to any child who qualifies as a of right – meaning that the Home Office has no

discretionary power to refuse a valid application and has to assess the application based on evidence submitted. However, a valid application does entail the payment of a fee – currently set at £1012.

Meeting this fee is a common problem for families subject to an NRPF restriction. Those parents who are in the country because they have the care of a child who was born in the UK and who has lived in there for seven years will generally see their child becoming eligible for citizenship at the time of their tenth birthday. Migrant support groups report many instances where the family is not able to claim their child's right to be British simply because they cannot afford the fee.

The existence of this injustice has been noted by organisations working to support the interests of young people and is now the subject of a campaign launched by Amnesty International UK.<sup>29</sup> This is calling on the government to:

- Remove any element of the registration fee over and above the actual cost of administration.
- Exempt the entire fee in the case of children in local authority care.
- Introduce a waiver of the fee in the case of any child who is unable to afford the administrative cost of registration.

The exorbitant level of Home Office fees has become a contentious issue and has started to receive a lot of negative coverage in the media as one of the injustices arising from 'hostile environment policies'.<sup>30</sup> However, it stands as a clear example of the way in which Home Office policy on immigration has been prepared to countenance the experience of destitution amongst migrants entitled to leave to remain in the UK, offering partial redress only when the evidence for extreme hardship has become overwhelming.

## **Section 8. Conclusion: What Needs to be Done**

### **8.1 Why the problem exists**

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<sup>29</sup> See Amnesty International UK, *Stop Blocking Children's Rights* <https://www.amnesty.org.uk/actions/home-office-stop-profiteering-childrens-rights#.WzTCoz5jHq8.twitter>

<sup>30</sup> See 'A money-making machine': families struggle to pay Home Office charges, by Sarah Marsh, Guardian 24 June 2018 [https://www.theguardian.com/uk-news/2018/jun/24/home-office-charges-families-struggle-to-pay-money-making-machine?CMP=share\\_btn\\_tw](https://www.theguardian.com/uk-news/2018/jun/24/home-office-charges-families-struggle-to-pay-money-making-machine?CMP=share_btn_tw)

Why does the UK have a large population of migrant people, many of whom are having to survive on very low incomes?

The answer lies in the fact that the U.K. stands at the centre of powerful economic forces which link its own labour markets to countries abroad, creating the elements of a global market for workers. Most of this takes the form of outsourcing manufacturing and back-office service jobs to countries paying lower wages. This can be done when the producers of goods or providers of services do not have to be physically close to the markets where the product is being sold. But some manufacturing and service-providing processes need the workforces to be present – examples of this being building construction and maintenance, fresh food production, hospitality, and health and social care.

These are all industries that have expanded in recent decades, filling the space in the labour market that was once there for the metal-goods manufacturing industries which once provided well-paid, unionised jobs to around 35% of the UK workforce. The replacement jobs are far more likely to be remunerated at minimum wage levels, offering less in the way of long-term security of employment and career development. With this characteristic structure native workers have tended to shun the job opportunities available in the low wage sector, using higher education and skill-training to compete for jobs in business that continue to provide decent wages and career prospects.

With these forces in play the low-wage sector of the economy has been obliged to seek its workers abroad, using migrants to fill chronic shortages for labour. A great deal of this has been sourced from citizens of EU countries who can use free movement rights to enter the country for employment with little impediment. But the demand for workers in low wage jobs has been insatiable for much of the last 20 years, and has extended to creating employment opportunities for people from non-EEA countries, whose rights to enter and remain, if they exist at all, are provided in the less clear-cut fashion of refugee and humanitarian asylum routes, international students, and family migrants.

It is from these groups that we find the groups of migrants whose right to remain is most likely to have the NRPF condition attached to their leave. The structure of the immigration rules and the configuration of the various rights to remain has thereby managed to pool together vulnerable groups of migrants, fated to work in low pay jobs, and with obligations to support children. With no relief from inevitable hardship being provided from mainstream social welfare benefits, large parts of the immigration control system have worked to produce the poverty and destitution which is the subject of this report.

It is possible that the factors described above will not always be present and the UK economy will cease to act as such a strong magnet bringing people across the world to fill the gaps in the low-pay sectors of its labour market. Innovations in technology might mean that houses and offices are built and maintained by robots in the future, reducing the demand for workers which is currently met by migrants. After years of boom businesses in the hospitality sector – restaurants and hotels – might go into decline, leading to redundancies and unemployment, which is another way of killing off demand for migrants. However, our point is that until that point is ever reached, it is quite simply wrong to pile further layers of hardship on to groups of people who share in the aspirations of the rest of the population to have a better future for themselves and their families. If the availability of public fund benefits helps to secure this better future for the rest of the population, then it is a matter of simple social justice that we should extend it to migrants who have made this country a home for themselves and their families as well.

The argument becomes even more compelling when we consider the impact that the NRPF policy has on children. The community-based migrant support groups report that for scores of their clients the hardship caused by having no recourse last for many years and covers a large part of the early years of young lives. Young people are aware that their parents are being treated differently as they begin to understand the significance of the days spent at social services departments in pursuit of a Section 17 support, or meals taken in community centres because they are free-of-charge, or the search for vouchers that will allow the use of a local food bank. They are sensitive to the fact that their poorer quality clothes attract the scorn of fellow school students, causing antipathy to lessons and behavioural problems.

Parents take several jobs in an effort to earn sufficient income to meet grocery bills and pay the rent. Children from families affected by the NRPF policy are subjected to ad hoc childcare arrangements which at least allow mothers a few extra hours at work to earn a bit more. The inability to pay going-rates for registered childminders means that at least some of this provision will be of an unsatisfactory standard.

Housing insecurity is endemic amongst NRPF families. Support groups report how common it is that a mother will share a small room with one or more of her children. Rent can make up the biggest share of weekly income, sometimes as high as 70 or 80% of what the parent earns. Arrears inevitably mount up leaving the families regularly experiencing the threat of eviction. Children raised in these circumstances will experience the society they live in as an irredeemably hostile place, offering little in the way of the things needed by a growing child

to encourage them to believe that they belong in this world and have a shared interest in its values. As they grow to become young adults they have a store of highly negative experiences of the world they live in, equated this with the other great thing that they learn about the society they live in, that it creates a category for them as racial 'other', not accepted as being a 'natural' part of the community they live in.

We referred in an early section of this report to the fact that the growth of poverty and destitution is becoming a more widespread phenomenon across Britain, drawing in hundreds of thousands of people and not just migrants. The longer-term battle against the exclusion that poverty brings will need a social movement that brings communities of disadvantaged citizens and migrants close together and makes them collaborators in the fight against inequality and injustice. But to get to this point one demand needs to be met to resolve a predicament which at the moment most closely associates itself with the position of migrants – the gross unfairness of the no recourse to public funds condition.

## **8.2 Our Recommendations**

There is agreement across the sector that this policy is highly problematic, causing undue suffering. It is also a policy that is potentially discriminating against women, single mothers, people with disabilities and racialized migrants. All the groups we spoke to, agree that the No Recourse to Public Funds policy needs to be challenged.

### **We call for scrapping the no recourse to public funds condition as it applies to people with a permitted legal residence status.**

For those people, earning incomes that fail to secure the standard of life considered normal, we argue that they should be eligible for the full-range of welfare benefits that would be available to people settled without immigration restrictions. Bringing migrants within the scope of social protection available to others is critically important if we are to tackle the issues of integration and equality in ways that would facilitate the full participation of newcomers in the life of the communities in which they are settling. This is an urgent task for anyone committed to social justice and to equality as the policy is potentially discriminating against the most marginalised people in society: women, single mothers, people with disabilities and racialized migrants.

**Until there is an end to the NRPF policy, we call on local authorities to ensure that children living in families subject to NRPF restrictions should have access to free school meals.**

For those children living in families subject to NRPF it is imperative that they are able to receive free school meals; financial support for uniforms or help with transport to and from school.

**Until there is an end to the NRPF policy, we call on local authorities to end the practice of embedding Home Office officials into social services departments for the purpose of assessing applicants' eligibility.**

In order to avoid intimidation of applicants and ensure that decisions are driven by concerns for family welfare it is important to avoid the presence of immigration officials in social services departments during the assessment process.

**We call for more rigorous and systematic research to robustly assess the extent and long term impact the NRPF policy on families and child poverty.**

A systematic evidence base is required to assess the short and long term impact of the NRPF policy on poverty. This research needs to be based on participatory approaches and the co-production of knowledge with migrant families, policy and community organisations and academics. There has been a growth of research interest on families affected by NRPF, however this continues to be piecemeal in its coverage of geographic areas and migrant communities. Therefore a national evidence base is needed.