

Social protection: a reality check

December 2021

Introduction

1. This document forms the joint submission from Just Fair and Project 17 to the call for evidence issued by the UN Special Rapporteur on Extreme Poverty for input into his thematic report to the UN Human Rights Council "[Social protection: a reality check](#)".¹
2. **Just Fair**² is a UK charity that is working to realise a fairer and more just society by monitoring and advocating for economic, social, and cultural rights (ESCR) in the UK. We aim to ensure that the UK Government's law, policy, and practice comply with international and domestic human rights obligations pertaining to ESCR. Together with Project 17 we provide the secretariat to the [All Party Parliamentary Group on No Recourse to Public Funds](#).
3. **Project 17**³ is a UK charity that works to end destitution among migrant children. We work with families experiencing exceptional poverty to improve their access to local authority support. We believe that all children have the right to a home and enough to eat, regardless of their parents' immigration status. To achieve our vision, we provide advice, advocacy, and support for individuals. We build capacity in other organisations, and we campaign for the improved implementation of statutory support.
4. This report will focus on a key issue in relation to the right to social security;⁴ the impact of the UK Government's 'No Recourse to Public Funds' (NRPF) policy.

Executive Summary

5. The NRPF policy represents an egregious breach of a number of economic, social, and cultural rights (ESCR), notably the right to social security and can leave individuals and families destitute. It is a policy that disproportionately impacts already disadvantaged groups including women, children, Black, Asian and minority ethnic communities and disabled people. Mitigations to the policy are unevenly applied and can be complex to the point of being inaccessible in practice. While there have been some extensions of support in response to the pandemic, there are still people falling through the gaps in support and this **will only be remedied by ensuring that everyone has access to a social security safety net by bringing the no recourse to public funds policy to an end**. The Nationality and Borders Bill currently making its way through the UK Parliament could increase the number of people subject to NRPF.⁵

¹ Deadline for submissions: 20 December 2021

² <https://justfair.org.uk/>

³ <https://www.project17.org.uk/>

⁴ Article 9 of the International Covenant on Economic, Social and Cultural Rights

⁵ For more information about the potential impacts, see minutes of recent evidence to the All Party Parliamentary Group on NRPF, including testimony from those with lived experience of the policy: <https://appgnrpf.files.wordpress.com/2021/11/03.11.2021-more-distinctions-fewer-chances-to-rebuild-livelihoods-meeting-minutes.pdf>

Background information

6. **No recourse to public funds (NRPF)** is an immigration condition imposed on undocumented migrants and people who have leave to remain subject to a NRPF restriction. 'Public funds' are listed in Paragraph 6 the Immigration Rules⁶ and s115 of the Immigration and Asylum Act 1999.⁷ This is an exhaustive list so payments or services that are not on that list are not public funds. A person with NRPF cannot access most welfare benefits or social housing but they can access publicly funded services that are not listed as 'public funds'.
7. Without the protection of social security, many families with NRPF with family members not in work, or not earning enough income to live on through work, end up living in destitution and are at high risk of homelessness, exploitation and abuse.⁸ As this submission will examine, the extreme impact of the NRPF policy on the right to social security illustrates the interconnectedness of rights, as often many other rights are negatively impacted such as the right to adequate standard of living⁹ (including food and housing), health,¹⁰ equality,¹¹ education,¹² and work¹³ (including just and favourable conditions).¹⁴ As noted by the Equality and Human Rights Commission, the NRPF policy has been found to breach the Human Rights Act and to be unlawful in certain circumstances.¹⁵
8. A recent report by Citizens Advice¹⁶ highlighted that the majority of people with NRPF are in work, (60% respondents said they were in paid work before the pandemic) and therefore are paying taxes into a benefit system which they broadly cannot access. In addition, 37% of those currently working are key workers, employed in industries like food delivery and health and social care that has helped keep the UK going during the pandemic.
9. The UK Government does not produce data on the overall number of people living in the UK with NRPF attached to their immigration status or the number of dependants in those households, however other organisations have worked to gauge the scale of people impacted. The Migration Observatory at the University of Oxford estimate by the end of 2019, there were at least 175,000 children under 18 in families who would be expected to have NRPF and around 1.4 million adults.¹⁷ In addition to this there are estimated to be approximately 215,000

⁶ Available here at para 6.2: [Immigration Rules: introduction - Immigration Rules - Guidance - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/immigration-rules-introduction)

⁷ Available here: [Immigration and Asylum Act 1999 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/1999/33)

⁸ '[Sometimes my belly will just hurt](#)': No Recourse to Public Funds and the Right to Food' Sustain, Project 17, CAWR (2019)

⁹ Article 11 of the International Covenant on Economic, Social and Cultural Rights

¹⁰ Article 12 of the International Covenant on Economic, Social and Cultural Rights

¹¹ Article 3 of the International Covenant on Economic, Social and Cultural Rights

¹² Article 13 of the International Covenant on Economic, Social and Cultural Rights

¹³ Article 6 of the International Covenant on Economic, Social and Cultural Rights

¹⁴ Article 7 of the International Covenant on Economic, Social and Cultural Rights

¹⁵ For more information, see the Equality and Human Rights Commission's '[Human Rights Tracker](#)'

¹⁶ '[How do I survive now? The impact of living with No Recourse to Public Funds](#)', November 2021, Charles Smith, Papatya O'Reilly, Rebekka Rumpel and Rachel White for Citizens Advice

¹⁷ '[Children of migrants in the UK](#)', August 2020, The Migration Observatory at The University of Oxford

undocumented children in the UK who are also subject to the NRPF policy¹⁸. These numbers do not account for the number of British children subject to the NRPF policy due to their parents having NRPF.

10. **Section 17** of the Children Act 1989¹⁹ imposes a general duty on local authorities to safeguard and promote the welfare of children ‘in need’ in their area. To fulfil this duty, Section 17 gives local authorities the power to provide support, including accommodation and financial support, to families with children “in need’, even if they have no recourse to public funds. The power under Section 17 can be used to support the family as a whole and to promote the upbringing of the child within the family unit. Section 17 has clear ramifications in alleviating some of the worst impacts of the NRPF policy, particularly in relation to children. However, the support provided by this mechanism is often inaccessible to families due to hostile gatekeeping tactics and, when support is provided, this has frequently been found to be inadequate to address the needs of children.

11. The **Nationality and Borders Bill** [currently making its way through the UK Parliament](#) could increase the number of people subject to NRPF. We are particularly concerned about a proposed clause²⁰ which sets out that refugees will be discriminated against based on the method in which they arrive to the UK. The Bill sets out that limited services will be granted to refugees on this basis, and that those deemed to have arrived in what the Bill considers irregular routes could be subject to the NRPF condition, have limited family reunion rights, and have restricted access to indefinite leave.²¹

¹⁸ ‘[London’s children and young people who are not British citizens: A profile](#)’, Greater London Authority, January 2020.

¹⁹ Available here: [Children Act 1989 \(legislation.gov.uk\)](#)

²⁰ Currently Clause 11, but as the Bill is moving through the UK Parliament, this is subject to change. The most current version of the Bill can be accessed here: <https://bills.parliament.uk/bills/3023/publications>

²¹ For more information about the potential impacts, see minutes of recent evidence to the All Party Parliamentary Group on NRPF, including testimony from those with lived experience of the policy: <https://appgnrpf.files.wordpress.com/2021/11/03.11.2021-more-distinctions-fewer-chances-to-rebuild-livelihoods-meeting-minutes.pdf>

Questions

- ❖ *What are the key gaps that remain in your country's social protection system? Which population groups, and in which regions, are inadequately covered by social protection schemes?*

12. The impact of the NRPF policy is felt disproportionately by groups who mainly overlap with 'protected characteristics' as defined by the [Equality Act 2010](#)²² including women, disabled people, pregnant (and maternity stage) people, older people and Black, Asian and minority ethnic (BAME) British children. A 2019 study²³ found:
- Women constitute an estimated 85% of those applying to have the NRPF condition removed. Nearly all of these women are single mothers. The NRPF condition indirectly discriminates against women on account of their sex because - amongst other factors - it restricts their access to full-time employment because of curtailments to free childcare entitlements.²⁴
 - The NRPF condition prevents people with low-incomes from earning a living wage through employment because it excludes them from in-work benefits.²⁵
 - Disabled people, pregnant (and maternity stage) women and elderly people are often unable to work and simultaneously face higher outgoing costs, causing the negative impact of the NRPF condition to be greater.²⁶
 - 90% of the families involved in the study had at least one British child. British children whose parents are subject to NRPF receive less favourable treatment than their British peers who have British parents. Examples of this unequal treatment include British children from NRPF families being restricted from benefiting from childcare, free school meals and social housing. More than 95% of the British children in the study were BAME children. The less favourable treatment faced by British children from NRPF families on the grounds of national origin is therefore linked to indirect discrimination on the grounds of race.
 - 74% of 66 people surveyed experienced at least one day when they were subject to NRPF where they could not afford to eat a hot and nutritious meal. 90% of these were women with children.
 - Nearly all of those surveyed (63/66) had experienced severely inadequate and overcrowded accommodation whilst subject to NRPF.
 - 6% of telephone respondents were single women who had experienced street homelessness with their children whilst subject to NRPF.
13. In addition, a recent survey by Citizens Advice²⁷ found that 78% of those consulted who had NRPF were BAME. Again, it's important to highlight that the Home Office does not publish

²² Protected characteristics as listed in the Equality Act 2010 include: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.

²³ '[Access Denied: The cost of the 'no recourse to public funds' policy](#)' June 2019, by Agnes Woolley, funded by Immigration Law Practitioners' Association (ILPA) and the Strategic Legal Fund (SLF)

²⁴ For more on this, see '[How do I survive now? The impact of living with No Recourse to Public Funds](#)', November 2021, Charles Smith, Papatya O'Reilly, Rebekka Rumpel and Rachel White for Citizens Advice at page 11

²⁵ *Ibid.*, p.13

²⁶ *Ibid.*, p.12

²⁷ '[How do I survive now? The impact of living with No Recourse to Public Funds](#)', November 2021, Charles Smith, Papatya O'Reilly, Rebekka Rumpel and Rachel White for Citizens Advice

statistics on the ethnicity of those subject to the NRPF policy, and so we rely upon civil society organisations (CSOs) to undertake data gathering.

14. What is clear from these studies is that the NRPF policy has a discriminatory impact upon particular groups who already face other discriminations and thus the impact upon them is compounded. This contributes to driving people into situations of extreme poverty and making them vulnerable to exploitation and abuse as a result of not having access to an adequate right to social security. This has important implications for the right to equal enjoyment of all economic, social, and cultural rights.²⁸

❖ *To what extent do conditionalities attached to the granting of social protection benefits undermine social protection systems? What is the impact of such conditionalities on people who experience poverty?*

15. Notable here is the ‘cascading’ effect of NRPF. Technically people with NRPF are only barred from accessing ‘public funds’ as set out in the exhaustive lists previously mentioned.²⁹ In reality many financial support schemes are only accessible if one is in receipt of a qualifying benefit included on the list of public funds.

16. In addition, as noted by Citizens Advice,³⁰ (with just one exception,)³¹ eligibility for benefits designed to support children is determined by the immigration status of the parents or carers the children live with. As a result, many children who are themselves British citizens or have indefinite leave to remain, are unable to receive entitlements such as [Child Benefit](#),³² because their resident parent(s) have NRPF. Of people with NRPF polled by Citizens Advice, 27% are parents who share a household with their children.

17. Again, due to a lack of data from the UK Government, we rely upon the work of CSOs to extrapolate the potential impact of these numbers. Citizens Advice applied this percentage to the Oxford Migration Observatory estimate of adults with NRPF and found that it equates to around 329,000 parents in the UK. They also note that parents with NRPF face some of the most challenging circumstances and have almost no state support. They can’t access any of the core benefits designed to support the cost of bringing up children, including Child Benefit and [the child element of Universal Credit](#). Although state school positions are available, children whose

²⁸ Article 3 of the International Covenant on Economic, Social and Cultural Rights

²⁹ See footnotes 6 and 7 above

³⁰ [‘How do I survive now? The impact of living with No Recourse to Public Funds’](#), November 2021, Charles Smith, Papatya O’Reilly, Rebekka Rumpel and Rachel White for Citizens Advice

³¹ [Disability Living Allowance](#)

³² For more examples, see [Written evidence from Project 17, The Unity Project and The Children’s Society](#) to the UK Parliament’s Work and Pensions Committee Inquiry, ‘Children in poverty: No recourse to public funds’, September 2021 at page 8

parents have NRPF can't (in normal circumstances) get free school meals³³ or the additional educational funding associated with them.³⁴

18. In their recent submission to the List of Issues Prior to Reporting for the Committee on the Rights of the Child, the Children's Rights Alliance for England (CRAE), noted the stark and multifaceted impact on children's rights that the NRPF policy has, "*Children in households affected by NRPF face high levels of destitution, hunger, and homelessness.*"³⁵

❖ *What is the rate of non-take-up for the various social benefit schemes available in your country? What obstacles prevent eligible individuals and households from accessing the benefits to which they are entitled? What are the economic, psychological, and policy effects of non-take-up, both for the individual experiencing it and for the State? How can non-take-up be reduced?*

19. A key obstacle in the take-up of support in relation to those impacted by NRPF is lack of knowledge of available support as well as local authority gatekeeping of 'Section 17' support from families. Project 17 assert that it has become systemic and is a major issue in undermining social protections for those impacted by NRPF. A report³⁶ in 2019 by Project 17 found that 60% of their clients were unlawfully refused Section 17 support when they first approached their local authority and that it was commonplace for families to be turned away before an assessment was conducted. For those who did manage to access an assessment for support, the process was typically intrusive, stressful, and exhausting. Many local authorities employ a number of strategies which Project 17 believes are designed to deter families from accessing Section 17 support. These include:

- **Misinformation:** 22% of families were wrongly refused support on the basis of their immigration status. The rationale in these cases was arbitrary and decisions were made before an assessment was conducted. Although some parents are excluded from accessing support under Schedule 3 of the Nationality, Immigration and Asylum Act 2002, local authorities must assess whether the family's situation is so serious that a failure to provide support would breach human rights, regardless of whether they have leave to remain. Other families were incorrectly told that by requesting support under Section 17 they were trying to claim 'public funds' which might constitute a breach of the condition of their leave.
- **Threats to take children into care:** Some of Project 17's clients were told that their children would be taken into care on the basis of destitution alone. In all the cases where this occurred, there were no safeguarding concerns to warrant parents being separated from

³³ In Wales, schools currently have discretion to provide free school meals for Children whose families are subject to NRPF and can claim this back from the Welsh government: WQ81376(e), 23 October 2020

³⁴ During the pandemic, eligibility for free school meals was extended to some children with NRPF, it is not known whether this will continue. Department for Education, '[Coronavirus \(COVID-19\): temporary extension of free school meals eligibility to NRPF groups](#)' (October 2021).

³⁵ '[England Civil Society Submission to the United Nations Committee on the Rights of the Child to inform its List of Issues Prior to Reporting \(LOIPR\)](#)' Children's Rights Alliance for England (CRAE) 2020

³⁶ '[Not Seen, Not Heard: Children's Experiences of the Hostile Environment](#)' February 2019, Project 17

children. In some cases, these decisions were made in the presence of children, causing extreme distress and anxiety.

- **Attacking credibility:** Local authority assessments often focus heavily on the credibility of parents. Assessments of families are extremely intrusive and investigate all aspects of parents' lives. Credit checks are routine and fraud officers are often involved in assessments of families. In some cases, parents are asked to provide DNA samples. Fraud-focused local authority assessments become much more about trying to catch parents out than assessing whether the child is in need. This approach comes at the expense of a focus on the child.
- **Intimidation and aggression:** The families that Project 17 works with regularly report encountering intimidation, aggression, and disrespect when trying to access Section 17 support. Negative attitudes towards families with NRPF are rife in many local authorities and parents are often subjected to unprofessional and disrespectful treatment. Sadly, in some cases, Project 17 clients also reported experiencing racism from local authority staff. One Nigerian woman Project 17 supported was called 'bush girl' by her social worker.

Sometimes when I went there, they would be very mean to us. They wouldn't help us at all. When we were there they called the police and they handcuffed my mum. One time the security guard pushed my mum to the ground and she had to go to the hospital. She had high blood pressure and was unwell.

Aliyah, age 10

I would like the social services to help people so that they don't stay in the cold like my family did. Sarah, age 8

Testimonies from children with lived experience of NRPF³⁷

20. **A lack of knowledge about potential support** is another major obstacle. A very limited number of migrants with leave to remain in the UK can apply to have the (NRPF) condition removed if they are facing destitution. The application to remove the condition is called a 'Change of Conditions', however the process is extremely complex and time-consuming for applicants, and often requires expert advice that is largely unavailable.³⁸ Even when applications are successful, it is already too late to prevent avoidable destitution and distress, including that of children. A recent evidence submission by Project 17 and others to the UK Parliament's Work and Pensions Committee highlighted that as well as the difficult process, there is also a lack of knowledge of this support amongst potential recipients, local authorities, and also organisations working to support migrants.³⁹

21. While the UK Government assert that mitigations are in place to prevent destitution, it is clear that there are major barriers to the realisation of these mitigations, including gatekeeping, a lack

³⁷ ['Not Seen, Not Heard: Children's Experiences of the Hostile Environment'](#) February 2019, Project 17

³⁸ See for example, ['A Huge Gulf: Demand and Supply for Immigration Legal Advice in London'](#) June 2021, Jo Wilding, Maureen Mguni, and Travis Van Isacker for Justice Together

³⁹ ['Written evidence from Project 17, The Unity Project and The Children's Society'](#) to the UK Parliament's Work and Pensions Committee Inquiry, 'Children in poverty: No recourse to public funds', September 2021

of knowledge of mitigations and how they work (from public officials and those impacted by NRPF) and overly burdensome and complex processes.

❖ *To what extent are informal workers protected by social protection schemes provided by the State in your country? What measures have been put in place to help informal workers transition to the formal economy? What challenges remain?*

22. Project 17 notes that people with NRPF are more likely to be in informal and low-paid types of employment.⁴⁰ These forms of employment were particularly hard hit during the pandemic, and many lost their source of income or saw their income reduced. However, as illustrated in evidence submitted to the UK Parliament's Work and Pensions Committee by Project 17 and others, there was little support available from social protection schemes designed to help people impacted by the pandemic for those experiencing NRPF. For example, less than 13% of families assisted by The Unity Project in the first six months after lockdown had been able to access the [furlough scheme](#) and less than 3% had received [a self-employed grant](#), due largely to being in precarious employment.⁴¹ This had serious repercussions for the realisation of the right to health. 22% percent of families that The Unity Project assisted during lockdown had underlying health conditions that put them 'at risk' from the virus. Of these, 54% were forced to continue working throughout lockdown, despite the potentially fatal consequences.⁴²
23. Finally, Project 17 note that undocumented people working informally are often deterred from accessing support under Section 17 for fear of criminal sanctions. If they ask the local authority for support they will have to explain their income, including any informal work. There is a risk that the local authority could then report this to the police and criminal sanctions will follow. As a result, parents are trapped - they have to keep working to feed their families, but can't ask for support because of fear of being found out. Project 17 have experienced some instances of local authorities using this fear of prosecution as a gatekeeping tactic - implying that they will report people to the police for illegal working if requests for support continue.

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⁴⁰ *Ibid.*, p. 5

⁴¹ *Ibid.*, p. 10

⁴² *Ibid.*, p.9

Annex

Resources for further reading:

- ['Not Seen, Not Heard: Children's Experiences of the Hostile Environment'](#) February 2019, Project 17
- ['Children of migrants in the UK'](#), August 2020, The Migration Observatory at The University of Oxford
- ['Access Denied: The cost of the 'no recourse to public funds' policy'](#) June 2019, by Agnes Woolley, funded by Immigration Law Practitioners' Association (ILPA) and the Strategic Legal Fund (SLF)
- ['How do I survive now? The impact of living with No Recourse to Public Funds'](#), November 2021, Charles Smith, Papatya O'Reilly, Rebekka Rumpel and Rachel White for Citizens Advice
- ['A Huge Gulf: Demand and Supply for Immigration Legal Advice in London'](#) June 2021, Jo Wilding, Maureen Mguni, and Travis Van Isacker for Justice Together
- [Written evidence from Project 17, The Unity Project and The Children's Society](#) to the UK Parliament's Work and Pensions Committee Inquiry, 'Children in poverty: No recourse to public funds', September 2021
- ['Sometimes my belly will just hurt': No Recourse to Public Funds and the Right to Food'](#) Sustain, Project 17, CAWR (2019)
- ['England Civil Society Submission to the United Nations Committee on the Rights of the Child to inform its List of Issues Prior to Reporting \(LOIPR\)'](#) Children's Rights Alliance for England (CRAE) 2020
- ['More Distinctions, Fewer Chances to Rebuild Livelihoods? The impact of Clause 10.5 of the Nationality and Borders Bill on Refugees'](#), Minutes of evidence session of the All Party Parliamentary Group on No Recourse to Public Funds, Wednesday 3 November 2021
- Equality and Human Rights Commission's ['Human Rights Tracker'](#), particularly the 'Rights to an adequate standard of living'
- ['London's children and young people who are not British citizens: A profile'](#), Greater London Authority, January 2020