

NRPF
NETWORK

No
Recourse
to Public
Funds

Assessing and supporting adults with no recourse to public funds

Practice guidance for local authorities in England

directors of
adass
adult social services

Local 
Government
Association

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1. Introduction

Local authorities prevent and alleviate destitution and homelessness by providing essential 'safety-net' support to people with no recourse to public funds. Despite a government target to end rough sleeping by 2024, immigration-based restrictions on access to benefits and homelessness assistance under Part VII of the Housing Act 1996 continue to apply and be extended to new groups.

However, when duties and powers are engaged under the Care Act 2014, accommodation and financial support can be provided to adults with care and support needs who have no recourse to public funds. Additionally, discretionary powers and government funding provided to housing authorities to reduce rough sleeping can be used to provide shelter to non-UK nationals who do not qualify for care and support.

When local authority duties and powers are engaged to alleviate destitution and/or homelessness arising from a person's lack of access to benefits, providing an effective response comes with challenges and significant financial risk to local authorities. Government funding is generally targeted at ending rough sleeping with grants administered to housing authorities, whereas no reimbursement has been provided to social care for supporting households with no recourse to public funds, which collectively costs 72 local authorities £64 million per year.

When support is provided, it can take a long time to resolve the person's situation of homelessness. Adults with care needs receive support for an average 2.7 years and 60% exit support following a grant of leave to remain, with the local authority often dependent on Home Office decision making. Even where funding has been provided to support people at risk of rough sleeping, the local authority will be taking on significant financial risk by providing shelter when the person's lack of access to benefits and mainstream housing assistance cannot be quickly resolved.

Many adults with no recourse to public funds who are experiencing homelessness will be 'on the edge of care', having complex needs but not necessarily social care needs that would engage a duty to provide care and support. Therefore, when a person has an appearance of need, social care must establish whether duties and powers under the Care Act 2014 are engaged. When assistance under the Care Act cannot be provided, the local authority must ensure that all alternative options available to the individual are fully considered.

In order to end rough sleeping, promote an individual's well-being, and reduce the financial impact on a local authority when support is provided, a holistic approach needs to be undertaken when a person with no recourse to public funds is experiencing homelessness. This will require partnership working across social care and housing, and, in some cases, public health and the NHS. Partnership working across social care, housing, public health, and the NHS will ensure better outcomes for people who are facing multiple disadvantages in their lives. It will also be necessary to enable access to immigration advice and draw on the support of voluntary and community sector organisations that can provide specialist services and advocate for individuals.

This guidance is intended to assist local authorities to establish which duties and powers will need to be considered when an adult who is ineligible for benefits is experiencing

homelessness, who may need to be involved in delivering support, and what can be done to help establish a long-term solution to the person's situation of homelessness or destitution

1.1 How to use this guidance

This guidance can be referred to by adult social care, housing, public health and NHS professionals who are responsible for making decisions about entitlement to support or who are advising adults with no recourse to public funds who are experiencing homelessness.

Part one (chapters 2 to 9) focuses on the provision of care and support, including accommodation, to adults with no recourse to public funds who are living in the community or being discharged from hospital.

Part two (chapters 10 to 13) provides information about other support for people with no recourse to public funds, including aftercare provided under section 117 of the Mental Health Act 1983, NHS continuing healthcare and Home Office support. The guidance also covers discretionary powers to provide shelter, which may need to be considered as part of measures a local authority (usually housing authority) is undertaking to end rough sleeping. Long-term solutions to the person's situation of homelessness or destitution are also explored.

As social care and housing are devolved areas of law, this guidance refers to legislation that applies in England only. Local authorities in Wales, Scotland, and Northern Ireland will need to refer to the relevant legislation when establishing whether statutory duties and powers apply. As immigration law is applicable across the UK, this guidance may still be informative from a practice perspective for local authorities in Wales, Scotland, and Northern Ireland.

For information about the legislation that applies in Scotland, councils in Scotland can refer to the COSLA guidance: migrants' rights and entitlements.

1.2 Who has no recourse to public funds?

In order to identify the support options that are available to a non-UK national who is destitute or experiencing homelessness, it will be necessary to establish the person's immigration status and whether they have access to public funds (benefits and local authority housing assistance). A person will have no recourse to public funds when they are 'subject to immigration control'. Some European Economic Area (EEA) nationals will be described as having 'no recourse to public funds' if they do not satisfy benefit eligibility tests.

The immigration terminology used in this guidance is listed in the glossary. For further information about who has no recourse to public funds, see the NRPF Network website (www.nrpfnetwork.org.uk).

1.3.1 Persons 'subject to immigration control'

Section 115 of the Immigration and Asylum Act 1999 specifies that a person will have no recourse to public funds (benefits and local authority housing assistance) when they are 'subject to immigration control'.

A person will be subject to immigration control when they have one of the following types of immigration status:

- Leave to enter or remain, which is subject to a 'No Recourse to Public Funds' (NRPF) condition.
- Leave to remain that is subject to a maintenance undertaking.
 - This only applies to a person who has indefinite leave to remain as the adult dependent relative of a person with settled status and the prohibition on claiming public funds lasts for five years after they enter the UK.
- Leave to enter or remain as a result of a pending immigration appeal.
 - This would apply when a person has section 3C leave whilst an appeal against a refusal of leave to remain is pending.
- No leave to enter or remain when the person is required to obtain this, such as a:
 - Visa overstayer
 - Person seeking asylum
 - Person who has become 'Appeal Rights Exhausted' (ARE) following an unsuccessful immigration or asylum claim

When a person is subject to immigration control, they will be excluded from:

- Most benefits, including means-tested benefits
- Homelessness assistance under part VII of the Housing Act 1996
- A local authority allocation of social housing made under part VI of the Housing Act 1996

Having no recourse to public funds does not prevent a person from accessing other publicly funded services, such as social care or NHS treatment. Such services must not be denied to a person solely for the reason that they have no recourse to public funds. However, a person's immigration status (or lack of status) may be a factor that determines whether they can access some services, such as free secondary NHS care. The full list of benefits that are public funds and information about a person's entitlement to other services is available on the NRPF Network website.

A person who has lived in the UK for several decades may be lawfully present even if they do not have a document to confirm this. In such cases, the person may be able to evidence their status by applying to the Windrush Scheme. This should be taken into account before they are denied services on the basis of not having any lawful status. More information about the Windrush Scheme is available on the NRPF Network website.

1.3.2 EEA nationals

A European Economic Area (EEA) national or family member of an EEA national is likely to have one of the following types of immigration status:

- Settled status (indefinite leave to remain)
- Pre-settled status (limited leave to remain)
- A pending EU Settlement Scheme application
- EU Settlement Scheme family permit
- Leave to enter granted on or after 1 January 2021 for a specific purpose, such as to visit, work, or study.
- Unlawfully present (without lawful status)

EEA nationals are currently issued with a digital status, which is accessible on gov.uk using the 'view and prove' system.

When a person is without lawful status, it will be necessary to identify whether they are entitled to apply to the EU Settlement Scheme, as they may be able to make a late application. A late applicant must be able to show that they have a reasonable excuse for missing the deadline.

A person can make an application to the EU Settlement Scheme if they are:

- An EEA national, family member of an EEA national, or person with a derivative right to reside who was living in the UK before 11pm on 31 December 2020
- A close family member of a person with settled or pre-settled status, who may have entered with an EU Settlement Scheme family permit or as a visitor, or who is not yet in the UK

An EEA national's immigration status will determine whether they are able to access benefits and housing assistance. For example, a person with leave to enter as a visitor or who has no lawful status will be subject to immigration control and have no recourse to public funds.

A person with pre-settled status or a pending EU Settlement Scheme application is not subject to the NRPF condition but will need to meet a 'right to reside' test in order to qualify for benefits and homelessness assistance. They may be described as having no recourse to public funds if they are found to be ineligible for benefits or homelessness assistance.

For more information about benefit entitlement for EEA nationals, see the NRPF Network website.

1.3.3. British citizens returning from abroad

British citizens returning to live in the UK after a period of residence abroad will have full access to benefits and housing assistance. However, if they have lived outside of the Common Travel Area (UK, Republic of Ireland, Channel Islands and Isle of Man) it may take up to three months to demonstrate that they are habitually resident for the purpose of qualifying for means-tested benefits and homelessness assistance.

Although British citizens are not prohibited from accessing public funds, those returning to live in the UK may face homelessness or destitution for a short period whilst their access to benefits and housing assistance is being established.

Part one: care and support for people with no recourse to public funds

2. Introduction to the Care Act 2014

When assessing need and providing care and support to an adult with no recourse to public funds, the local authority must apply the Care Act 2014, relevant regulations, and the Care and Support Statutory Guidance in the usual way. Chapters two to nine of this guidance set out the additional considerations that may need to be made due to the person's immigration status and lack of access to benefits.

Due to the high costs involved when accommodation and financial support is provided to a person with care and support needs, and the need to promote an individual's well-being, local authorities must also ensure that caseloads are monitored, and pro-active case-resolution is undertaken. The practice and service delivery considerations referenced in this chapter have been informed by the NRPF Network's work with local authorities that have established a specialist response.

2.1 Establishing entitlement to care and support

This section summarises the process that must be followed to determine whether an adult with no recourse to public funds is entitled to care and support. Full details are provided in later chapters in this guidance.

Care and support is not a 'public fund' for immigration purposes. Therefore, a person should not be refused a needs assessment or care and support solely because they have no recourse to public funds.

The local authority will have a duty to undertake a needs assessment when the person has an appearance of need. The decision to undertake a needs assessment is not dependent on the person's immigration status. For more information about the duty to undertake a needs assessment, see section 3.1.

Whilst a needs assessment is being undertaken, the local authority can meet urgent care and support needs, including by providing accommodation to a person who would otherwise be homeless. Not knowing the person's immigration status does not prevent the local authority from undertaking a needs assessment and/or meeting urgent needs for care and support. For more information about providing emergency support, see section 3.3.

When a person has an appearance of need, the local authority will need to:

- Conduct a needs assessment to identify whether the person has care and support needs
- Determine whether their care and support needs meet the eligibility criteria
- Apply the destitution exception when a person is 'subject to immigration control'

For more information about undertaking needs assessments, see chapter 4.

When the eligibility criteria are met, the duty to meet needs (section 18) will be engaged and the local authority must consider how to meet the person's needs for care and support.

When a person with no recourse to public funds is experiencing homelessness, the local authority must consider whether accommodation can be provided. For more information about meeting needs, see chapter 5.

When the person has care and support needs that do not meet the eligibility criteria ('non-eligible care and support needs'), the local authority must determine whether the power to meet non-eligible needs (Section 19(1)) is engaged. This gives the local authority an opportunity to provide accommodation and financial support to a person who does not meet the eligibility criteria, but who is likely to experience a breach of human rights if they are homeless due to having complex or additional needs. For more information about meeting non-eligible needs, see section 4.4.

When a person who has no lawful status qualifies for care and support, a human rights assessment must be undertaken. This applies when the duty to meet needs is engaged or when the local authority is considering whether its power to meet non-eligible needs is engaged. The human rights assessment will need to determine whether the person can be expected to return to their country of origin to avoid destitution in the UK. If there is a barrier preventing return, care and support can be provided. However, if there is nothing preventing the person from returning, the local authority will have no duty to provide care and support. For more information about human rights assessments, see section 3.4.

When accommodation and financial support is provided, as well as ensuring that the person's care needs are met, the local authority would also need to identify a long-term pathway to resolve the person's situation of homelessness and assist the person to achieve this. For more information about pathways off support, see chapter 13.

When the local authority has determined that the person is no longer eligible for care and support, or does not require accommodation and financial support due to a change in circumstances, it must follow the principles set out in the Care and Support Statutory Guidance when withdrawing support. For more information about withdrawing support, see chapter 6.

Adult social care and health professionals will need to consider how to assist a person who has been admitted to hospital when they have no recourse to public funds and are experiencing homelessness. For more information about hospital discharge processes, see chapter 9.

The local authority must also be aware of how adult safeguarding requirements and support for carers apply to a person with no recourse to public funds. For more information about adult safeguarding, see chapter 7. For more information about support for carers, see chapter 8.

When meeting the care and support needs of a person with no recourse to public funds who does not require accommodation it will be important not to make assumptions based on the person's immigration status with regards to how financial assessments are undertaken or the ways in which the person's care and support needs can be met. For more information about meeting needs, see chapter 5.

2.2 Effective service delivery

Local authorities incur high costs providing long-term support to adults with no recourse to public funds. Delivering care and support to people with no recourse to public funds will involve addressing immigration status issues as well as providing accommodation and financial support. Therefore, it is necessary to establish a strategic and specialist response

in order to secure better outcomes for adults with care and support needs and to deliver a cost-efficient service.

Staff and managers overseeing needs assessments and managing cases will need to have 'legal literacy' and understand how their duties under the Care Act 2014 apply to an adult with no recourse to public funds. For example, an adult should not be refused care and support solely because they have no recourse to public funds. Such a consideration is irrelevant because social care is not a public fund for immigration purposes.

Using an 'invest to save' model, resourcing a lead practitioner role or team has been proven to be effective at delivering a specialist and targeted response, with costs reduced through more expedient case resolution. However, where a low-volume of cases do not make a specialist response cost-effective, it will be necessary to establish an internal protocol that clarifies responsibility for identification, case management, and managerial oversight of adults with no recourse to public funds who are being assisted by the local authority.

Some local authorities without specialist workers have established a case panel to oversee requests for support. For example, this could involve the social worker presenting details of the adult's case to a manager, legal officer, and welfare rights officer to collectively make a decision about what assistance is provided and what will need to be regularly reviewed when support is provided.

Using NRPF Connect within the service enables local authorities to manage caseloads effectively, to obtain immigration status information from the Home Office, and to expediently progress the immigration claims of people receiving support.

Adult social care, the NHS, and the housing authority have a duty to co-operate when exercising their functions relating to adults with needs for care and support and to secure and advance the health and welfare of their local population, so effective partnership working with these services will be necessary.

When delivering a service to adults with no recourse to public funds, it will be necessary to clarify the following within any internal protocols:

- How an adult with no recourse to public funds will be identified when they are requesting, or being referred to, adult social care at different access points across the local authority.
- Who will provide oversight in order to support staff who are undertaking assessments so that decisions are lawful and decisions regarding the type of accommodation and financial support provided are consistent.
- Who will be responsible for undertaking a human rights assessment, when this is required.
- How 'ordinary' (i.e. not residential or supported) accommodation will be sourced and whether expertise of the housing department/authority can be drawn on to assist with this.
- How the local authority will determine how much financial support will be provided to an adult who is accommodated.

- Who will be responsible for identifying an exit pathway and assisting the person to take the relevant steps to achieve this when accommodation and financial support is provided.
- Who will have responsibility for recording and monitoring service provision on NRPF Connect, so that data shared with the Home Office for assessment and case resolution purposes is accurate and up-to-date.
- How oversight will be maintained across all social care teams that are supporting adults with no recourse to public funds so that the full costs being incurred are accounted for and to ensure that consistent practice is being followed.
- How a referral needs to be made to the housing department/authority when an adult obtains access to public funds and accommodation and financial support no longer needs to be provided under the Care Act.

3. Referral considerations

This chapter sets out the initial considerations that will need to be made when a referral or request for care and support is made by a person who has no recourse to public funds.

It will be necessary to identify at the point of referral, or as early as possible, whether the person has (or appears to have) no recourse to public funds and whether they are destitute and/or experiencing homelessness. For more information about who has no recourse to public funds, see section 1.3.

When a referral or request for care and support is made by a person with no recourse to public funds, adult social care will need to establish the following:

- Does the local authority have a duty to assess need – i.e. does the person have ‘an appearance of need’?
- Which local authority will be responsible for meeting care and support needs?
- Is emergency accommodation required whilst initial enquiries and assessments are carried out?
- Is a human rights assessment required?

3.1 Does the local authority have a duty to assess need?

Section 9 of the Care Act sets out the local authority’s duty to undertake a needs assessment:

(1) Where it appears to a local authority that an adult may have needs for care and support, the authority must assess—

- (a) whether the adult does have needs for care and support, and
- (b) if the adult does, what those needs are.

...

(3) The duty to carry out a needs assessment applies regardless of the authority’s view of—

- (a) the level of the adult’s needs for care and support, or
- (b) the level of the adult’s financial resources.

The threshold for triggering a needs assessment is low. Where there is evidence that a person may have a possible social care need, it is likely that this test will be met. Although it is helpful to evidence any physical, mental health, or medical condition that may give rise to a social care need, a formal diagnosis is not required.

When a person has an appearance of need, the local authority will be required to undertake an assessment regardless of whether the person may or may not meet the eligibility criteria. When an assessment concludes that a person does not have eligible needs, the local authority will need to consider whether any non-eligible care and support needs can be met under section 19(1). This decision will be particularly important when a person with non-

eligible care and support needs is experiencing homelessness. Additionally, a person who does not have eligible needs will still be entitled to receive information and advice necessary to reduce, prevent and delay current and future needs. For a person with no recourse to public funds, who may not have previously accessed statutory services, this provides the local authority with an opportunity to signpost the person to relevant information and/or alternative support services.

A needs assessment can be undertaken regardless of which local authority will be responsible for meeting needs. However, it is advisable to try and clarify at the outset which authority will be responsible for meeting needs, and where possible to refer directly to that authority.

3.2 Which local authority is responsible for meeting care and support needs?

Section 18(1) of the Care Act states that the local authority will have a duty to meet a person's eligible needs for care and support when:

..the adult is ordinarily resident in the authority's area or is present in its area but of no settled residence.

The Care and Support Statutory Guidance states that when ordinary residence cannot immediately be established, the local authority to which the person has presented will be required to meet the person's needs:

19.11 The determination of ordinary residence must not delay the process of meeting needs. In cases where ordinary residence is not certain, the local authority should meet the individual's needs first, and then resolve the question of residence subsequently. This is particularly the case where there may be a dispute between 2 or more local authorities.

When a person presents with an appearance of need, the local authority cannot refuse to undertake an assessment if their place of ordinary residence is in another local authority area. When a person's place of ordinary residence is unclear, or likely to be disputed, the local authority should proceed with the needs assessment and approach the other local authority when the person's needs have been assessed. However, where a person is very clearly ordinarily resident in another authority's area, it may be possible, and more beneficial to the individual, to advise them to request a needs assessment from that authority in the first instance.

Should a dispute arise regarding a person's place of ordinary residence, the local authorities concerned must follow the procedures set out in the Care and Support (Disputes Between Local Authorities) Regulations 2014 and take all reasonable steps to resolve the dispute between themselves. When ordinary residence is disputed, the Care and Support Statutory Guidance states:

19.77 ..It is critical that the person does not go without the care they need, should local authorities be in dispute. The local authority that is meeting the needs of the adult or the carer on the date that the dispute arises, must continue to do so until the dispute is resolved. If no local authority is currently meeting the person's needs, then

the local authority where the person is living or is physically present must accept responsibility until the dispute is resolved. The local authority which has accepted provisional responsibility is referred to as the 'the lead authority'.

The term 'ordinary residence' is not defined in the Care Act, although the Act does specify when a person will be deemed to be ordinarily resident in a particular area when certain situations arise.

3.2.1 Establishing ordinary residence

The meaning of the term 'ordinary residence' is not defined in legislation but has been considered by the Courts, with the leading case being *Shah v Barnet London Borough Council* [1982] UKHL 14. The general principle is that a person will be ordinarily resident in the area where they have voluntarily taken up residence for a settled purpose.

The Care and Support Statutory Guidance states:

19.15 Local authorities must always have regard to [*Shah v London Borough of Barnet*] when determining the ordinary residence of adults who have capacity to make their own decisions about where they wish to live. Local authorities should in particular apply the principle that ordinary residence is the place the person has voluntarily adopted for a settled purpose, whether for a short or long duration. Ordinary residence can be acquired as soon as the person moves to an area, if their move is voluntary and for settled purposes, irrespective of whether they own, or have an interest in a property in another local authority area. There is no minimum period in which a person has to be living in a particular place for them to be considered ordinarily resident there, because it depends on the nature and quality of the connection with the new place.

In ordinary residence determination OR 9 2010 (20 January 2011), the Secretary of State for Health confirmed that a person's immigration status was not relevant to the consideration of ordinary residence for the purposes of accessing community care services. Therefore, a person who does not have lawful status in the UK can be considered to be ordinarily resident.

For an adult who lacks capacity to decide where to live, or a looked after child who is transitioning to adult social care and other accommodation, the local authority will need to follow the Supreme Court's findings in the case of *R (Cornwall Council) v Secretary of State* [2015] UKSC 46, which have been incorporated into chapter 19 of the Care and Support Statutory Guidance.

3.2.2 No settled residence

People who are experiencing homelessness may not have a clear place of ordinary residence and instead can be deemed to have no settled residence. Although the Care and Support Statutory Guidance suggests such situation arises in rare circumstances, this is likely to apply when a person has no recourse to public funds and has been 'sofa surfing', rough sleeping, or has had precarious living arrangements that have frequently changed.

The Care and Support Statutory Guidance states:

19.43 Where doubts arise in respect of a person's ordinary residence, it is usually possible for local authorities to decide that the person has resided in one place long enough, or has sufficiently firm intentions in relation to that place, to have acquired an ordinary residence there. Therefore, it should only be in rare circumstances that local authorities conclude that someone is of no settled residence. For example, if a person has clearly and intentionally left their previous residence and moved to stay elsewhere on a temporary basis during which time their circumstances change, a local authority may conclude the person to be of no settled residence.

19.44 Sections 18 and 20 of the Care Act make clear that local authorities have a duty to meet the eligible needs of people if they are present in its area but of no settled residence. In this regard, people who have no settled residence, but are physically present in the local authority's area, should be treated in the same way as those who are ordinarily resident.

19.45 A local authority may conclude that a person arriving from abroad is of no settled residence, including those people who are returning to England after a period of residing abroad and who have given up their previous home in this country. For further information on people returning to England after living abroad, see Annex H, paras. 31-34 (British citizens resuming permanent residence in England after a period abroad).

3.2.3 Urgent needs

Sections 19(3) and 20(6) provide the local authority with a power to meet the urgent needs of an adult with care and support needs, or carer, respectively. This means that when a person who is ordinarily resident in one local authority area becomes in urgent need of care or accommodation whilst they are in another local authority area, the second local authority will be able to meet the person's needs. Appendix H of the Care and Support Statutory Guidance provides examples of when this could occur and information about communication and funding arrangements between the authorities concerned.

3.2.4 Out of area accommodation placements

Where a person is placed in 'specified accommodation' outside of the local authority's area, section 39(1) stipulates that the placing authority will retain responsibility for meeting the person's care and support needs, as the person will continue to be ordinarily resident in the placing authority's area. Specified accommodation is defined in the Care Act as a nursing/care home, shared lives scheme, or supported living/extra care housing.

A person with no recourse to public funds may not require specified accommodation and instead may be provided with ordinary accommodation locally, such as a private tenancy or bed and breakfast placement. This placement may be outside of the local authority's area due to the availability and affordability of such accommodation. When an adult with no recourse to public funds qualifies for care and support, it is established practice that the placing authority will retain responsibility of providing care and support (including accommodation) until that placement is lawfully discharged. For more information about when support can end, see chapter 6.

3.2.5 NHS accommodation

Section 39(5) requires a local authority to treat a person who is being provided with NHS accommodation under the National Health Service Act 2006 as ordinarily resident:

- (a) in the area in which the adult was ordinarily resident immediately before the accommodation was provided, or
- (b) if the adult was of no settled residence immediately before the accommodation was provided, in the area in which the adult was present at that time.

The Local Government Association and Association of Directors of Social Care Ordinary residence guide advises that, where the individual is of no settled residence, the local authority in whose area the hospital is situated will be the authority responsible for meeting the person's needs on discharge. For more information about hospital discharge practice, see chapter 9.

3.2.6 Mental health aftercare

Section 117(3) of the Mental Health Act 1983 sets out which local authority will be responsible for jointly providing or commissioning aftercare services with the clinical commissioning group (integrated care board from July 2022) to a person who is being discharged from a period of detention under certain sections of the Mental Health Act.

Section 117(3) states that the relevant local authority is:

- (a) if, immediately before being detained, the person concerned was ordinarily resident in England, for the area in England in which he was ordinarily resident;
- ...
- (c) in any other case for the area in which the person concerned is resident or to which he is sent on discharge by the hospital in which he was detained.

The position regarding responsibility for providing aftercare services to a person who is subsequently readmitted to hospital under the Mental Health Act has been considered by the Courts. The Court of Appeal found that the local authority where the person was ordinary resident prior to their first admission will remain responsible for the provision of aftercare services when a person is discharged following a subsequent readmission. (See: R (Worcestershire CC) v SSHSC [2021] EWCA Civ 1957).

Worcestershire County Council has applied to the Supreme Court for permission to appeal this decision and the position of the Court of Appeal is not currently reflected in the Care and Support Statutory Guidance. Local authorities will instead need to refer to the statutory guidance: DHSC's position on the determination of ordinary residence disputes pending the outcome of the Worcestershire case.

For more information about aftercare, see chapter 10.

3.2.7 Detention and prison release

The Care Act and Care and Support Statutory Guidance address the question of ordinary residence when a person is detained in, or being released from, a prison. In the absence of any specific provisions in the Care Act relating to people who are detained at an Immigration

Removal Centre, advice from the local authority's legal team may need to be sought if any questions arise regarding a person's place of ordinary residence on their release.

With regards to responsibility for meeting needs when a person is in prison, or is being released, the Care and Support Statutory Guidance states:

23.19 Since April 2015, any adult in a prison, a young offender institution, bail accommodation or an approved premise has been treated as if they are resident in the local authority area in which that prison, young offender institution, bail accommodation or approved premises is situated, making that local authority area responsible for meeting their care and support needs.

17.48 ..where a person requires a specified type of accommodation (see chapter 19 on ordinary residence) to be arranged to meet their eligible needs on release from prison, local authorities should start from a presumption that they remain ordinarily resident in the area in which they were ordinarily resident before the start of their sentence.

17.49 However, determining an offender's ordinary residence on release from prison will not always be straightforward and each case must be considered on an individual basis. For example, it may not be possible for an offender to return to their prior local authority area due to the history of their case and any risks associated with a return to that area.

17.50 In situations where an offender is likely to have needs for care and support services on release from prison or approved premises and their place of ordinary residence is unclear and/or they express an intention to settle in a new local authority area, the local authority to which they plan to move should take responsibility for carrying out the needs assessment.

3.2.8 Returning British citizens

Annex H of the Care and Support Statutory Guidance provides guidance about establishing ordinary residence for a British citizen who has returned to live in England after a period of residence abroad. Each case needs to be determined on an individual basis.

A returning British citizen will usually acquire ordinary residence in the area they are intending to live for a settled purpose, regardless of how long they have lived there. If they do not intend to settle in the local authority's area, they can be considered to have no settled residence and provided with services if they are in urgent need of care and support.

3.2.9 Carers

To determine which local authority will be responsible for meeting the needs of a carer, the place of ordinary residence of the person receiving care (or where they are present if they have no settled residence) must be established. Section 20(1) states that the same local authority will be responsible for meeting the needs of the person requiring care and their carer.

3.2.10 Continuity of care

When a person with no recourse to public funds who is receiving care and support moves between local authority areas of their own accord, the usual procedures regarding continuity

of care must be followed. These are set out in sections 37 and 38 of the Care Act, the Care and Support (Continuity of Care) Regulations 2014, and section 20 of the Care and Support Statutory Guidance.

The continuity of care procedure will apply when a person seeking asylum, who is receiving a package of care whilst living in Home Office accommodation, is dispersed to accommodation in another local authority area. In such cases, the receiving authority would need to be notified and the case transferred in the usual way. For more information about providing care and support to people seeking asylum, see section 5.2.3.

3.3 Is emergency accommodation required?

Section 19(3) provides the local authority with a power to meet urgent needs for care and support before the relevant assessments have been completed:

A local authority may meet an adult's needs for care and support which appear to it to be urgent (regardless of whether the adult is ordinarily resident in its area) without having yet—

- (a) carried out a needs assessment or a financial assessment, or
- (b) made a [eligibility] determination under section 13(1).

This power enables a local authority to provide interim accommodation and financial support to a person with no recourse to public funds who would otherwise be destitute or homeless whilst a needs assessment is being undertaken. Failure to exercise this power could result in a breach of Article 3 of the European Convention on Human Rights, where such a decision compels the person to sleep rough or be without shelter and funds. (See: *R (Limbuella) v Secretary of State for the Home Department* [2005] UKHL 66).

Interim support can also be provided under section 19(3) when a person presents with urgent needs and their place of ordinary residence cannot be immediately established, or whilst a human rights assessment is being undertaken in addition to the needs assessment.

3.4 Is a human rights assessment required?

Section 54 and Schedule 3 of the Nationality, Immigration and Asylum Act 2002 place a bar on the provision of support or assistance under part one of the Care Act 2014 to a person who is 'in breach of immigration laws' (or is in another excluded group), unless such assistance is necessary to prevent a breach of human rights.

When Schedule 3 applies, the local authority will need to undertake a human rights assessment, in addition to the needs assessment, to determine whether care and support can be provided to the individual.

This section summarises when Schedule 3 applies. For more detailed information, see our template human rights assessment and accompanying practice guidance: *When and how to conduct a human rights assessment*.

3.4.1 Schedule 3 of the Nationality, Immigration and Asylum Act 2002

When a person who is 'in breach of immigration laws' qualifies for care and support, Schedule 3 requires the local authority to determine whether the person can be reasonably expected to return to their country of origin to avoid a breach of human rights arising from

their destitution in the UK. In practice, this means that the local authority will need to undertake a human rights assessment in order to identify whether there are any barriers preventing the person from being able to return.

When a barrier to return is identified and the person qualifies for care and support, the bar on providing support can be lifted and the person's care and support needs can be met.

If no barrier to return is identified and the local authority concludes that a person can freely return to their country of origin to avoid destitution in the UK, it will not be required to provide care and support, but, instead, can offer assistance with return and ongoing support whilst travel arrangements are made.

A human rights assessment is only required when the person:

- Is 'in breach of immigration laws' or is in another excluded group
- Is eligible for care and support under section 18 of the Care Act
- Has non-eligible care and support needs that the local authority is considering meeting under section 19(1), in the absence of a section 18 duty being engaged

3.4.2 Excluded groups

Schedule 3 will only apply when a person is in an excluded group. A person will be in an excluded group when they have one of the following types of immigration status:

- 'In breach of immigration laws' and not currently seeking asylum, such as a:
 - Visa overstayer
 - Illegal entrant
 - Appeal Rights Exhausted (ARE) asylum seeker, who claimed asylum in-country, rather than at port of entry
- Refugee status granted by a European Economic Area State
- ARE asylum seeker who has failed to comply with removal directions
- ARE asylum seeking family with dependent children that has been certified by the Secretary of State as having failed to take steps to leave the UK voluntarily (NB such certifications are not currently imposed by the Home Office)

Schedule 3 does not apply to a person who is seeking asylum or who is lawfully resident in the UK, such as a person with leave to remain that is subject to a 'No Recourse to Public Funds' condition or pre-settled status granted under the EU Settlement Scheme. When a person is lawfully present, or is seeking asylum, a human rights assessment will not be required. In such cases, eligibility for care and support will depend on the outcome of the needs assessment only.

3.4.3 Affected provisions of the Care Act 2014

Schedule 3 only applies to 'support or assistance' delivered under the following provisions of the Care Act:

- Duty to meet needs for care and support (section 18)
- Power to meet non-eligible care and support needs (section 19(1))
- Duty and power to meet a carer's needs for support (section 20)

Schedule 3 does not prevent a local authority from:

- Undertaking a needs assessment (section 9) or carers needs assessment (section 10)
- Meeting urgent needs for care and support whilst assessments are being undertaken (section 19(3))
- Undertaking its general duties with regards to providing information and advice (section 4) or prevention (section 2)

3.4.4 Human rights assessments

In practice, a human rights assessment is usually undertaken after emergency support has been provided or following a change to the person's immigration position. In such cases the local authority will establish whether care and support can continue to be provided to a person who is in an excluded group, rather than to determine eligibility for assistance when the person initially requests this.

When a person is in an excluded group and is assessed as having eligible care and support needs, engaging section 18 of the Care Act, the local authority must undertake a human rights assessment to determine whether the bar on the provision of care and support can be lifted.

When section 18 is not engaged, but the person is assessed as having non-eligible care and support needs, the local authority must consider whether to exercise its discretion to provide care and support under section 19(1) of the Care Act. Where such a person is 'in breach of immigration laws' and would otherwise be destitute and/or homeless, a human rights assessment must be undertaken to establish:

- Whether there are any other sources of support or assistance available in the UK, such as Home Office asylum support, and, if not,
- Whether the person is able to return to their country of origin to avoid an Article 3 breach arising from their destitution in the UK

A human rights assessment therefore forms part of the local authority's decision-making when it is establishing whether section 19(1) is engaged to provide a person with accommodation to meet non-eligible care and support needs. (See: *R(Aburas) v London Borough of Southwark* [2019] EWHC 2754). For more information about meeting non-eligible care and support needs, see section 4.4.

If the local authority establishes, following a needs assessment, that the adult does not have any care and support needs, there is no requirement to carry out a human rights assessment and the person will need to be signposted or referred to alternative services if they are destitute and/or experiencing homelessness. For more information about alternative support options, see chapter 12.

3.4.5 Checking immigration status

Not knowing the person's immigration status does not prevent the local authority from undertaking a needs assessment and/or meeting urgent needs for care and support. However, when a person requests care and support, their nationality and immigration status will need to be established in order to:

- Ascertain whether the person has (or appears to have) no recourse to public funds and therefore may require accommodation and financial support if they are destitute or experiencing homelessness.
- Identify whether Schedule 3 of the Nationality, Immigration and Asylum Act 2002 applies and if so, whether there is an outstanding immigration claim, appeal or other legal action.

The local authority can obtain immigration information directly from the Home Office in one of the following ways:

- By using NRPF Connect to monitor caseloads, prioritise cases and obtain relevant immigration status information from the Home Office within agreed timescales.
- By contacting the Home Office Status, Verification, Enquires and Checking email service at: IE-CAS@homeoffice.gov.uk (if NRPF Connect is not subscribed to)

It is advisable to check any information obtained from the Home Office with the person directly and/or their legal representative in case a new application or appeal is being prepared or has been recently submitted but has not been recorded on Home Office systems.

4. Eligibility for care and support

This chapter sets out how an adult's needs should be assessed and eligibility for care and support determined under the Care Act 2014 when a person has no recourse to public funds.

4.1 Well-being duty

Section 1 of the Care Act requires the local authority to explain how it has had regard for a person's well-being when it is carrying out a care and support function or is making a decision in relation to a person requiring care and support.

Section 1(2) requires the following aspects of well-being to be considered:

- (a) personal dignity (including treatment of the individual with respect);
- (b) physical and mental health and emotional well-being;
- (c) protection from abuse and neglect;
- (d) control by the individual over day-to-day life (including over care and support, or support, provided to the individual and the way in which it is provided);
- (e) participation in work, education, training or recreation;
- (f) social and economic well-being;
- (g) domestic, family and personal relationships;
- (h) suitability of living accommodation;
- (i) the individual's contribution to society.

When a person has no recourse to public funds and is experiencing homelessness, it will be necessary to pay particular attention to their social and economic well-being, suitability of living accommodation, and physical and mental health and emotional well-being. The person's immigration status may mean that they are unable to access benefits, are likely to have insecure housing or be at risk of homelessness, and, in some instances, will not be able to work or access other services. Being in a precarious financial and/or immigration position can leave a person at risk of exploitation or domestic abuse. Consideration may need to be given about whether any safeguarding action needs to be undertaken if a person is a victim of such behaviour. For more information about adult safeguarding, see chapter 7.

4.2 Needs assessment

The process for undertaking a needs assessment is set out at section 9 of the Care Act, the Care and Support (Assessment) Regulations 2014, and chapter 6 of the Care and Support Statutory Guidance. The assessment process must be followed in the usual way when a person has no recourse to public funds.

4.2.1 Who can be involved in the needs assessment?

The person requesting support, their carer, and any other person that they want to participate, must be involved in the needs assessment.

When a person lacks capacity to ask for another person to be involved, the local authority must ensure that any person who appears to be interested in the person's welfare participates in the assessment.

Section 67 of the Care Act requires the local authority to arrange for an independent advocate to represent and support the adult when it considers that the person would experience substantial difficulty in doing one or more of the following if an independent advocate was not available:

- Understanding relevant information
- Retaining that information
- Using or weighing that information as part of the process of being involved
- Communicating the individual's views, wishes or feelings (whether by talking, using sign language or any other means)

When a person requires an independent advocate, the advocate must be appointed prior to the needs assessment being undertaken so that they are involved in the process from start to finish, otherwise the assessment may be unlawful. In the case of *R(SG) v London Borough of Haringey* [2015] EWHC 2579 (Admin), the Court found that a needs assessment undertaken for a person seeking asylum was flawed because it was unclear whether the outcome of the assessment had been prejudiced due to the absence of an advocate, and because SG was in no position to influence matters. SG had severe mental health problems, including complex PTSD, insomnia, depression and anxiety, was illiterate, and spoke no English. An advocate was only appointed after the assessment had been completed, so the local authority was ordered to undertake a new assessment.

4.2.2 Who can carry out a needs assessment?

Regulation 5 of the Care and Support (Assessment) Regulations requires the local authority to ensure that the person undertaking the needs assessment has the skills, knowledge and competence to carry out the assessment and is appropriately trained. The local authority may also be required to consult a person who has expertise in relation to the condition or other circumstances of the individual whose needs are being assessed.

Social workers who are undertaking needs assessments for adults with no recourse to public funds must have an awareness of how an individual's access to benefits, housing and other services may impact on their care and support needs. Managers will need to ensure that staff are aware of where they can obtain further information, such as from the NRPF Network website.

4.2.3 How long should a needs assessment take?

Neither the Care Act or the Care and Support (Assessment) Regulations specify a timeframe for completing a needs assessment. However, the Care and Support Statutory Guidance states:

6.29 An assessment should be carried out over an appropriate and reasonable timescale taking into account the urgency of needs and a consideration of any fluctuation in those needs. Local authorities should inform the individual of an indicative timescale over which their assessment will be conducted and keep the person informed throughout the assessment process.

The local authority may have already provided emergency accommodation, or be in the position of having to imminently enact this power, to a person with no recourse to public funds whilst their needs assessment is being undertaken. Therefore, it will be in the interests of all parties for the assessment to be concluded as soon as possible to clarify the person's accommodation options, including whether ongoing support under the Care Act 2014 must be provided.

4.2.4 What will a needs assessment consider?

Section 9(4) of the Care Act specifies that the needs assessment must identify the following:

- The person's care and support needs
- The impact of the person's needs for care and support on all aspects of wellbeing
- The outcomes that the person wants to achieve
- How, and to what extent, the provision of care and support could contribute to the achievement of those outcomes

The local authority must assess all of the person's needs arising from their own identity and characteristics, regardless of whether they are being met at the time of the assessment. (See: *R(Antoniak) v Westminster City Council* [2019] EWHC 3465)

4.2.5 What are 'care and support needs'?

The Courts have considered the meaning of the term 'care and support needs' in several cases involving people with no recourse to public funds and have generally concluded that this needs to be read in line with the accepted interpretation of a 'need for care and attention'. 'A need for care and attention' applied when eligibility for accommodation was established under section 21 of the National Assistance Act 1948 - legislation that has been repealed and replaced by the Care Act 2014.

R(Aburas) v London Borough of Southwark [2019] EWHC 2754 is the most recent case where the Court considered the term 'care and support needs'. The Court described needs for care and support as 'looked-after needs', in line with the way that a need for 'care and attention' had been defined by the courts in *R(M) v Slough BC* [2008] UKHL 52:

The natural and ordinary meaning of the words 'care and attention' in this context is 'looking after'. Looking after means doing something for the person cared for which he cannot or should not be expected to do for himself: it might be household tasks which an old person can no longer perform or can only perform with great difficulty; it might be protection from risks which a mentally disabled person cannot perceive; it might be personal care such as feeding, washing or toileting. This is not an exhaustive list. The provision of medical care is expressly excluded. (Paragraph 33)

By applying this interpretation, the Court found that when a person's need is only for accommodation and/or financial support they will not be considered to have care and support needs. (Paragraph 18)

Mr Aburas submitted that he was in need of social worker support in order to take medication and access food. However, the evidence provided to the Court did not establish that Mr Aburas needed the support of a social worker in order to take medication or prompt him to eat, or that missing his medication would give rise to serious suffering. The Court upheld the local authority's decision that Mr Aburas had no relevant needs for care and support.

4.3 Care and support eligibility criteria

When the local authority has identified that a person has care and support needs, it must then determine whether the person's needs meet the eligibility criteria, in accordance with section 13(1) of the Care Act and the Care and Support (Eligibility Criteria) Regulations 2015. When the eligibility criteria are met, section 18 of the Care Act will be engaged and the local authority will have a duty to meet the person's eligible care and support needs.

The Care and Support (Eligibility Criteria) Regulations 2015 set out the following three stage eligibility test:

2(1) An adult's needs meet the eligibility criteria if—

- (a) the adult's needs arise from or are related to a physical or mental impairment or illness;
- (b) as a result of the adult's needs the adult is unable to achieve two or more of the outcomes specified in paragraph (2); and
- (c) as a consequence there is, or is likely to be, a significant impact on the adult's well-being.

(2) The specified outcomes are—

- (a) managing and maintaining nutrition;
- (b) maintaining personal hygiene;
- (c) managing toilet needs;
- (d) being appropriately clothed;
- (e) being able to make use of the adult's home safely;
- (f) maintaining a habitable home environment;
- (g) developing and maintaining family or other personal relationships;
- (h) accessing and engaging in work, training, education or volunteering;
- (i) making use of necessary facilities or services in the local community including public transport, and recreational facilities or services; and

(j) carrying out any caring responsibilities the adult has for a child.

(3) For the purposes of this regulation an adult is to be regarded as being unable to achieve an outcome if the adult—

(a) is unable to achieve it without assistance;

(b) is able to achieve it without assistance but doing so causes the adult significant pain, distress or anxiety;

(c) is able to achieve it without assistance but doing so endangers or is likely to endanger the health or safety of the adult, or of others; or

(d) is able to achieve it without assistance but takes significantly longer than would normally be expected.

(4) Where the level of an adult's needs fluctuates, in determining whether the adult's needs meet the eligibility criteria, the local authority must take into account the adult's circumstances over such period as it considers necessary to establish accurately the adult's level of need.'

The Care and Support Statutory Guidance specifies that a 'physical or mental impairment or illness' can be interpreted broadly:

6.104...Local authorities must consider at this stage if the adult has a condition as a result of either physical, mental, sensory, learning or cognitive disabilities or illnesses, substance misuse or brain injury. The authority should base their judgment on the assessment of the adult and a formal diagnosis of the condition should not be required.

In order to establish whether the person can achieve the specified outcomes, any services the person is currently receiving must be disregarded. (GS v London Borough of Camden [2016] EWHC 1762, paragraph 38)

However, any care provided by friends or family, or other services the person is receiving, may be taken into consideration when the local authority determines how eligible needs can be met. For more information about friends and family care, see section 5.4.

An eligible need must arise from, or be related to, a physical or mental impairment or illness, rather than be the consequence of a person's lack of access to housing or funds. For example, if a person is unable to maintain a habitable home environment solely because they lack accommodation, that would not be an eligible need. However, if the person is unable to maintain a habitable home environment because a physical impairment means they cannot manage this without assistance, this would be an eligible need, regardless of whether they currently have accommodation available to them.

Although a need for accommodation in itself would not be a care and support need, the provision of accommodation may be necessary in order to secure effective care and support for an eligible need. The local authority must therefore consider whether accommodation is required when it determines how to meet a person's eligible needs. (See: R(Aburas) v London Borough of Southwark).

When a person is 'subject to immigration control', the local authority will have no duty to meet needs for care and support that have arisen solely due to destitution of the effects of destitution, so must also consider whether this applies in the assessment. For more information, see section 4.5.

4.4 Power to meet non-eligible needs

When a local authority determines that a person does not have eligible care and support needs, the duty to meet needs under section 18 of the Care Act will not be engaged. However, the local authority must consider whether the power at section 19(1) is engaged to meet non-eligible care and support needs.

Section 19(1) enables the local authority to provide accommodation to a person with no recourse to public funds whose care and support needs do not meet the eligibility threshold, where failing to meet the individual's care and support needs could give rise to a breach of human rights. Therefore, section 19 (1) provides the local authority with a means of intervening to prevent needs from becoming more exacerbated as a result of homelessness when a person has no recourse to public funds and limited housing options available to them.

A decision about whether to engage this power will need to be made on a case-by-case basis, taking into account:

- The individual's circumstances
- The availability of alternative support
- When they are without lawful status (or are in another group excluded by Schedule 3 of the Nationality, Immigration and Asylum Act 2002), whether the person can avoid destitution in the UK by returning to their country of origin

4.4.1 Determining whether section 19(1) applies

Section 19(1) of the Care Act contains a discretionary power to meet non-eligible care and support needs:

(1) A local authority, having carried out a needs assessment and (if required to do so) a financial assessment, may meet an adult's needs for care and support if—

(a) the adult is ordinarily resident in the authority's area or is present in its area but of no settled residence, and

(b) the authority is satisfied that it is not required to meet the adult's needs under section 18.

The Care and Support Statutory Guidance states:

10.28 Where the local authority is not required to meet needs, it nonetheless may use its powers to meet any other needs. This may include, for example, meeting needs which are not 'eligible' (for example, those which do not meet the eligibility criteria), or meeting eligible needs in circumstances where the duty does not apply (for example, where the person is ordinarily resident in another area). Where the local authority exercises such a power to meet other needs, the same duties would apply regarding the next steps, and therefore a plan must be provided.

Additionally, a local authority must comply with the following sections of the Human Rights Act 1998:

3(1) So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights.

6(1) It is unlawful for a public authority to act in a way which is incompatible with a person's Convention right.

'Convention rights' refer to the human rights set out in the European Convention on Human Rights. For example:

- Article 2: the right to life
- Article 3: the right to be free from torture, inhuman or degrading treatment
- Article 8: the right to respect for family and private life

In the case of *R(Aburas) v London Borough of Southwark*, the Court provides guidance at paragraph 10 as to how a local authority should determine whether section 19(1) is engaged and sets out how a local authority's human rights obligations interact with the Care Act.

In summary, in order to determine whether section 19(1) is engaged to meet non-eligible care and support needs by providing accommodation, the local authority would need to:

- (1) Identify any 'non-eligible' care and support needs
- (2) Identify whether failing to provide care and support would give rise to a breach of human rights
- (3) Undertake a human rights assessment considering the person's ability to return to their country of origin (when the person is 'in breach of immigration laws' or is in another excluded group)

(1) Identify any 'non-eligible' care and support needs

Firstly, the local authority would need to identify whether the person has a need for care and support, which is not an 'eligible' need, and therefore does not engage the section 18(1) duty to meet needs. The Court suggests examples of a 'non-eligible' need include where a person's needs do not relate to a prescribed specified outcome of the eligibility criteria or leave the person seriously unable to achieve one but not two specified outcomes.

(Paragraph 10(i))

If a person does not have any care and support needs or they are a person 'subject to immigration control' who has care and support needs that have arisen solely from destitution or the actual or anticipated effects of destitution, section 19(1) cannot be engaged to provide accommodation, and alternative support options would need to be considered. For more information about other types of support, see chapter 12.

(2) Identify whether failing to provide care and support would give rise to a breach of human rights

When a 'non-eligible' need has been identified, the local authority must consider whether the denial of care and support would give rise to a breach of human rights. When a potential breach of human rights is identified, section 19(1) imposes a duty in order to secure a human rights-compatible interpretation of the Care Act. The failure to exercise section 19(1)

by denying care and support in such circumstances, would be in breach of sections 3 and 6 of the Human Rights Act 1998.

When considering whether there may be a human rights breach, the local authority will need to consider whether there is a breach of Article 3 by asking the following question:

...is there an imminent prospect of serious suffering caused or materially aggravated by the refusal to provide accommodation so as to secure the support of a social worker? (Paragraph 12)

Taking into account the Court's guidance, the following scenarios may be examples of when section 19(1) could be engaged:

- A person who is assessed as having a care and support need relating to an ongoing illness that requires regular treatment, which, if missed, could give rise to serious suffering or a risk to the person's life.
- A person with a care and support need arising from a mental health condition, who would face serious suffering if they were to be homeless due to difficulties they would face as a result of their mental health.

The Human Rights Act 1998 does not in itself create a duty to provide support when a person is destitute or experiencing homelessness, so if the person does not have any care and support needs, section 19(1) cannot be engaged to provide accommodation.

(3) Undertake a human rights assessment considering the person's ability to return to their country of origin (where applicable)

When a person is 'in breach of immigration laws' (or is in another group excluded by Schedule 3 Nationality, Immigration and Asylum Act 2002), a human rights assessment will be an integral part of determining whether section 19(1) can be exercised to meet non-eligible care and support needs.

When Schedule 3 applies, the local authority must consider whether:

- There are any other sources of support or assistance available to the person in the UK, such as Home Office asylum support.
- If there are no other sources of support available in the UK, whether the person is able to return to their country of origin to avoid an Article 3 breach arising from their destitution in the UK.

The human rights assessment will lead to one of the following conclusions being made:

- The person can access other support in the UK, such as Home Office asylum support. In such cases, a transfer to that support would need to be arranged.
- There are no alternative support options in the UK but the person can return to their country of origin to avoid destitution, so accommodation and any other care and support could not be provided under section 19(1).
- There are no alternative support options in the UK but there is a legal barrier or practical obstacle preventing the person from being able to return to their country of origin. In such cases, support can be provided under section 19(1), where this has been deemed necessary in line with steps one and two.

For more information about how to undertake a human rights assessment, see section 3.4. For more information about other sources of support that may need to be considered, see section 12.4.4.

4.4.2 Expectant mothers

Prior to the Care Act coming into force, local authorities had a power under section 21(1)(aa) of the National Assistance Act 1948 to provide residential accommodation to expectant and nursing mothers who did not have any other needs for care and attention in addition to those associated with pregnancy or nursing a baby. There was no requirement for the pregnancy to be at a particular stage in order for accommodation to be provided on this basis. Section 21 of the National Assistance Act 1948 was repealed, following the implementation of the Care Act.

When the Government consulted on the Care Act eligibility regulations, responders, including local authorities, confirmed that no one who would have been provided with accommodation under the previous legislation would fall out of scope of the Care Act. The Department of Health, Response to the consultation on draft regulations and guidance for implementation of Part 1 of the Care Act 2014, states:

.. the Department asked the public if they were satisfied that the eligibility regulations could also cover cases currently provided for under section 21 of the National Assistance Act 1948. The majority of respondents to this question were local authorities, who said they felt confident that the new regulations together with the powers in section 19 of the Care Act would mean people who currently have access to care and support would continue to be supported when the regulations and guidance take effect in April 2015. (Page 23)

When a pregnant woman with no recourse to public funds presents as destitute or at risk of homelessness, in the first instance, the local authority would need to undertake a needs assessment. If the local authority determines that the eligibility criteria are not met, it must consider whether accommodation can be provided under section 19(1), taking into account the factors set out in section 3.4.1 of this guidance, including whether other support may be available to the expectant mother.

Although the power to accommodate is set out in the Care Act, often Children's Services, rather than adult social care will take responsibility for providing accommodation and financial support to a pregnant women with no recourse to public funds. A pre-birth assessment may need to be undertaken by Children's Services and a child in need assessment will be required when the child is born, in order to determine whether accommodation and financial support can be provided to the family under section 17 Children Act 1989. As steps will also need to be taken to help the mother establish a long-term pathway to resolve her homelessness, it may be more efficient for Children's Services to take ownership of the case before the child is born and more consistent for the mother to be assisted by the same team. For more information about pathways off support, see chapter 13.

4.4.3 Next steps when section 19(1) is not engaged

When the local authority decides that section 19(1) is not engaged to meet non-eligible care and support needs, the Care and Support Statutory Guidance specifies what must happen next:

10.29 If the local authority decides not to use its powers to meet other needs, it must give the person written explanation for taking this decision, and should give a copy to their advocate if the person requests. If the person cannot request this, then a copy should be given to the person's advocate or appropriate individual if this is in the best interests of the person. This explanation must also include information and advice on how the person can reduce or delay their needs in future. This should be personal and specific advice based on the person's needs assessment and not a generalised reference to prevention services or signpost to a general website. For example, this should involve consideration of alternative ways in which a person could reduce or delay their care and support needs, including signposting to support within the local community. Authorities may choose to provide this information after the eligibility determination, in which case this need not be repeated again. At whatever stage this is done, in all cases the person must be given a written explanation of why their needs are not being met. The explanation provided to the person must be personal to and should be accessible for the person.

When a person with no recourse to public funds is experiencing homelessness but cannot be provided with support by adult social care, it will be necessary to identify any alternative support options that the person could be signposted to and make any necessary referrals. Where emergency support has already been provided pending the outcome of the needs assessment it would be good practice to keep support ongoing until a transfer to any available alternative support has been made. For more information about alternative support options, see section 12.4.4.

4.5 Exception: needs arising solely from destitution

For some people with no recourse to public funds, the local authority will not be required to meet needs for care and support, where such needs have arisen solely due to destitution.

Section 21 of the Care Act prevents a local authority from meeting needs under sections 18 or 19, or providing preventative assistance under section 2(1) when a person is 'subject to immigration control':

(1) A local authority may not meet the needs for care and support of an adult to whom section 115 of the Immigration and Asylum Act 1999 ("the 1999 Act") (exclusion from benefits) applies and whose needs for care and support have arisen solely—

(a) because the adult is destitute, or

(b) because of the physical effects, or anticipated physical effects, of being destitute.

This exception only applies to people who are 'subject to immigration control' under section 115 of the Immigration and Asylum Act 1999. A person will be 'subject to immigration control' when they have one of the following types of immigration status:

- Leave to enter or remain, which is subject to a 'No Recourse to Public Funds' (NRPF) condition
- Leave to remain that is subject to a maintenance undertaking
- Leave to enter or remain as a result of a pending immigration appeal
- No leave to enter or remain when the person is required to obtain this

For more information about people who are subject to immigration control, see section 1.3.1.

For the purpose of applying section 21 of the Care Act, destitution is defined under section 95(3) of the Immigration and Asylum Act 1999, as follows:

A person is destitute if—

(a) he does not have adequate accommodation or any means of obtaining it (whether or not his other essential living needs are met); or

(b) he has adequate accommodation or the means of obtaining it, but cannot meet his other essential living needs.

Section 21 clarifies that local authorities are not required to provide care and support to a person who is subject to immigration control solely for the purpose of alleviating destitution when that person has no additional care and support needs.

The needs assessment will have identified whether a person has care and support needs, rather than solely a need for accommodation and financial support. Proper consideration of the eligibility criteria will have involved identifying whether the person's needs arise from, or are related to, a physical or mental impairment or illness. Therefore, in most cases, section 21 is unlikely to affect the outcome of the needs and/or eligibility assessment.

5. Meeting needs for care and support

This chapter sets out how an adult's needs for care and support can be met when the local authority has a duty to meet eligible care and support needs under section 18 of the Care Act or has determined that the power under section 19(1) is engaged to meet non-eligible care and support needs. When a person with no recourse to public funds is experiencing homelessness, the local authority must consider whether accommodation is required to meet the person's care and support needs.

5.1 How care and support needs can be met

When a person is assessed as having eligible care and support needs, engaging section 18(1) of the Care Act, the local authority must decide how it will meet the individual's needs. When section 19(1) is engaged, a person's non-eligible care and support needs must be met in the same way as a person who has eligible care and support needs.

The local authority has a broad scope in terms of deciding how care and support needs can be met. Section 8(1) sets out some examples of what care and support can be provided:

- (a) accommodation in a care home or in premises of some other type;
- (b) care and support at home or in the community;
- (c) counselling and other types of social work;
- (d) goods and facilities;
- (e) information, advice and advocacy.

The Care and Support Statutory Guidance states:

10.11 There are a number of broad options for how needs could be met, and the use of one or more of these will depend on the circumstances. Section 8(2) of the Act gives some examples of ways of meeting needs, and would cover:

- the local authority directly providing some type of support, for example by providing a reablement or short-term respite service
- making a direct payment, which allows the person to purchase their own care and support
- some combination of the above, for example the local authority arranging a homecare service whilst also providing a direct payment to meet other needs

Chapter 10 of the Care and Support Statutory Guidance explains how care and support planning should be undertaken. The care and support plan must set out how a person's needs will be met, taking into account the person's wishes, needs, and aspirations.

When a person's needs are met by pre-existing services or carers, the local authority must keep these arrangements under review. The local authority may need to consider a carer's immigration status and their ability to provide ongoing care.

Section 22 specifies that the local authority cannot meet needs by providing or arranging any health service or facility, which the NHS is responsible for providing under the National Health Service Act 2006, such as continuing healthcare or funded nursing care. For more information about care provided by the NHS, see chapter 11.

5.2 Providing accommodation to meet needs

Adult social care has a duty to refer individuals to a housing authority when a person is at risk of homelessness within 56 days. This should be undertaken as soon as a person being assessed for care and support is identified as being homeless or at risk of homelessness. For more information about the duty to refer, see section 6.1.2.

Section 23 of the Care Act specifies that the local authority cannot provide anything under the Care Act that would normally be provided by a housing authority under the Housing Act 1996. This would include temporary accommodation for a person who is eligible for homelessness assistance under Part VII of the Housing Act 1996 when they do not require a type of residential care or supported living accommodation, which would normally be arranged by adult social care.

When a person has no recourse to public funds, they will be ineligible for assistance under part VII of the Housing Act 1996 and so will not be able to access temporary accommodation from the housing authority. Adult social care can, therefore, provide accommodation to meet the care and support needs of a person with no recourse to public funds when section 18 or 19(1) of the Care Act is engaged.

5.2.1 What type of accommodation can be provided?

Section 8(1) of the Care Act specifies that a person's care and support needs can be met by the provision of any type of accommodation. Therefore, adult social care is not restricted to providing only residential care or supported accommodation under the Care Act.

Types of accommodation that are commonly provided to a person with no recourse to public funds, dependent on their needs, include:

- A residential placement
- Supported living accommodation
- 'Ordinary' temporary accommodation (TA), such as private rented or local authority TA
- A B&B/hotel placement

When a person's care and support needs can be met in a community setting, ordinary housing may need to be sourced and funded by adult social care. As procuring temporary accommodation is not a usual social work function, managers will need to set up a process that social workers can follow to procure accommodation. Where possible, it is advisable to draw on the expertise of the housing department/authority for advice or assistance with securing suitable accommodation placements.

5.2.2 When can accommodation be provided to meet needs?

The Care Act does not contain a specific test to determine when accommodation can be provided to meet needs. Eligibility for care and support must be established by applying the eligibility criteria that is set out in the Care and Support (Eligibility Criteria) Regulations 2015.

When applying the well-being duty, the suitability of a person's accommodation will need to be considered. For more information about establishing eligibility for care and support, see section 4.1.

Local authorities will need to follow guidance that has been provided by the Courts on the questions of when a local authority can provide accommodation to meet a person's care and support needs.

The Courts have found that:

- Although a need for accommodation in itself is not a care and support need, the provision of accommodation may be necessary in order to secure effective care and support for an eligible need, and must be considered when determining how to meet a person's eligible needs. (See: *Aburas v London Borough of Southwark*)
- When accommodation-related needs are identified, the local authority must consider whether to provide accommodation. (See: *R (SG) v London Borough of Haringey & Ors* [2017] EWCA Civ 322)
- A person will have 'accommodation-related' care and support needs when the services they require can only be provided in a home or would be effectively useless if the person has no home. For example, when a person requires a carer to help them get dressed and washed, such assistance can only be provided in their home, so this would clearly be an accommodation-related need. (See: *R(SG) v London Borough of Haringey* [2015] EWHC 2579 & *R(GS) v LB Camden* [2016] EWHC 1762)

Any decision made by a local authority must be compliant with public law principals and, therefore, must be lawful, rational, fair, and compatible with a person's human rights. When a person is identified as having accommodation-related needs, the failure to provide accommodation is likely to give rise to a breach of human rights if the person would otherwise experience a risk to their life (Article 2), inhuman or degrading treatment (Article 3), and/or a breach of their family or private life (Article 8).

In the majority of cases, when a person with no recourse to public funds is assessed as having eligible care and support needs, it is likely that accommodation will need to be provided to meet their needs. If accommodation is not provided, it will be necessary to clearly document the reasoning of this decision, setting out how the person's eligible care and support needs can be effectively met without the provision of accommodation.

5.2.3 Home Office asylum accommodation

The Home Office guidance, asylum seekers with care needs, sets out when a local authority will be responsible for providing care and support and specifies whether the local authority or Home Office will be required to provide accommodation to a person who is seeking asylum.

The guidance confirms that when a person who is seeking asylum appears to have care and support needs, the local authority must undertake a needs and eligibility assessment in the usual way and meet any eligible needs by providing care and support, including, in some cases, accommodation.

With regards to the provision of accommodation, the guidance states, at page 8:

Local authorities (LA) are generally only expected to provide accommodation to asylum seekers if their assessment shows that the person needs the sort of residential care that LA adult services are required to provide. An asylum seeker who has care needs which can be appropriately addressed in asylum support accommodation, and is otherwise eligible, should be accommodated by the Home Office following a care assessment.

The Home Office will arrange and provide accommodation when:

- The person does not have care and support needs
- The person has care and support needs that can be met in the community i.e. they do not require residential care

The local authority will be required to arrange and provide accommodation:

- When the person is assessed by the local authority as requiring residential care
- Whilst an assessment is being undertaken for a person who has presented with urgent needs before they have accessed Home Office accommodation (Initial Accommodation will not be provided by the Home Office until the needs assessment has been completed)

In the Home Office guidance, people with a pending asylum claim are not distinguished from people who have become Appeal Rights Exhausted (ARE) following an unsuccessful asylum claim. When a person is ARE and claimed asylum in-country (rather than at a port of entry), the local authority will need to carry out a human rights assessment to determine whether care and support can be provided, should the person qualify for this. ARE asylum seekers will normally be receiving section 4 asylum support, which is usually only provided when a barrier preventing the person from returning to their country of origin has been identified. Therefore, it is most likely that an ARE asylum seeker can be provided with care and support when they qualify for this. For more information about human rights assessments, see section 3.4.

There may be instances where it is not appropriate to refer a person seeking asylum to the Home Office for accommodation, such as when a move to a different area is likely to adversely impact the person receiving care and support. The local authority will not be prevented from providing accommodation under the Care Act to a person seeking asylum if the Home Office is unable to adequately meet the person's accommodation requirements, or the accommodation offered would negatively affect the person's well-being.

A person receiving asylum support may be dispersed from initial accommodation to an accommodation placement in another part of the UK. When a local authority is providing a package of care to a person who is moved to another area, the usual procedure for transferring care to the receiving local authority will need to be followed. For more information about continuity of care, see section 3.2.10.

5.2.4 National Referral Mechanism support

When a potential victim of trafficking or modern slavery is receiving accommodation through the National Referral Mechanism (NRM), it will be necessary to consider whether their care needs can be suitably met in the NRM accommodation. For example, it may be necessary to establish whether carers would be permitted to enter a safe house or whether any

adaptations can be made in the accommodation, should these be required. If accommodation available through the NRM is not suitable to meet the person's care and support needs, the local authority may need to provide alternative accommodation under the Care Act. For more information about NRM support, see section 12.4.4.

When a local authority provides accommodation to a victim of modern slavery who has care and support needs, the person should still be able to obtain a subsistence allowance and specialist support from their local NRM partner agency. The Salvation Army can be contacted in the first instance to find out what support is available.

For more information, see the government guidance: National referral mechanism guidance: adult (England and Wales).

5.2.5 Right to rent checks

Private landlords in England are required to carry out a right to rent check for all adults in a household when a property is being rented or sub-let, or when a person is a paying lodger. In some circumstances, housing associations will be required to undertake right to rent checks. A person will either have an unlimited right to rent, a time-limited right to rent, or no right to rent, depending on their immigration status. A person without leave to remain will usually have no right to rent, unless they are granted permission to rent by the Home Office.

The right to rent scheme does not prevent local authorities from providing a person with housing in the private rented sector to meet their care and support needs. The Home Office guidance, landlord's guide to right to rent checks, states:

Accommodation arranged by local authorities

The following residential tenancy agreements are exempt from the scheme, where they are arranged by a local authority which is acting in response to:

- a statutory duty owed to an individual
- a relevant power with the intention of providing accommodation to a person who is homeless, or who is threatened with homelessness

This includes instances where the person is to be placed into private rented property by the local authority.

In such circumstances, landlords should ask for written confirmation from the local authority that the authority is acting in response to a statutory duty and keep this on file.

Additionally, the following types of accommodation are exempt from right to rent checks:

- Care homes, hospitals, and hospices
- Accommodation arranged by the NHS as part of a package of continuing health care
- Hostels and refuges managed by a social landlord, voluntary organisation or charity, or where the operating costs are partly or fully provided by a local authority and it is managed on a non-commercial basis

5.3 Providing subsistence to meet needs

When a person with no recourse to public funds is provided with accommodation to meet their care and support needs, the local authority will usually need to provide them with financial support (subsistence payments).

It is up to each local authority to determine the amount of financial support that can be provided. The Care Act provides the local authority with a broad scope to meet a person's needs, enabling financial support to be provided. A flexible approach would need to be undertaken to determine how much subsistence a person requires based on their individual needs. However, to ensure fairness and consistency, and to minimise the resources required to establish an appropriate level of financial support, a local authority may wish to set minimum rates to cover basic living costs. Such a policy must allow flexibility to meet a person's additional needs. For example, if a person's needs will be met by attending a day centre, but they are unable to travel by public transport or it is far away from their accommodation, the person may require additional funds to cover the extra cost of transportation.

When determining a minimum subsistence rate, the type of accommodation being provided is likely to be a relevant factor. For example, a person in residential care will have most of their basic needs met. In such cases, the local authority may decide to have regard to the weekly personal expenses allowance, which a person who is contributing to their care would usually be left with. Local authority circular LAC(DHSC)(2022)1 specifies that the personal expenses allowance for 2022-23 is currently £25.65 per week.

Basic subsistence rates that have been benchmarked against other support schemes, such as Home Office asylum support or benefits, will need to be reviewed in line with any increases. See the NRPF Network website for details of the current Home Office support rates.

A person with no recourse to public funds will be able to access free prescriptions, dental care, and sight tests if they meet one of the exemptions relating to age, pregnancy or medical condition. If none of the exemptions apply, they can apply to the NHS Low Income Scheme. They will need to provide evidence that they are receiving support from their local authority. See the NRPF Network website for more information about entitlement to free prescriptions.

5.4 Care provided by friends and family

Section 18(7) of the Care Act specifies that the local authority is not required to meet needs for care and support where it has determined that these are already being met by an unpaid carer and such an arrangement can continue.

The Care and Support Statutory Guidance states:

10.26 Local authorities are not under a duty to meet any needs that are being met by a carer. The local authority must identify, during the assessment process, those needs which are being met by a carer at that time, and determine whether those needs would be eligible. But any eligible needs met by a carer are not required to be met by the local authority, for so long as the carer continues to do so. The local authority should record in the care and support plan which needs are being met by a

carer, and should consider putting in place plans to respond to any breakdown in the caring relationship.

In many cases, relying on care provided by friends or family will be consistent with the person's preferences and well-being, as well as being cost-effective for the local authority.

However, when a friend or family member, who does not have a form of settled immigration status, is providing care, there could be a risk that the caring relationship may break down at a future date, or even at short notice. For example, a person without leave to remain could be liable to enforcement action being undertaken against them by the Home Office, or a person who has limited leave to remain could overstay their visa or may not successfully extend their leave.

When a friend or family member is providing care, the immigration status of the carer will need to be taken into account to help inform the local authority's decision about whether it can continue to rely on the carer's help to meet the person's needs. When a carer has no lawful status, or time-limited immigration permission, this does not prevent them from providing care. However, the local authority would need to ensure that the carer's unsettled immigration status is noted in the care and support plan and is regularly reviewed. The person receiving care and support should be advised to contact their social worker as soon as they are aware of any changes that may impact on their carer's ability to continue to provide them with care. A plan may need to be made setting out how the person's needs will continue to be met should the carer's ability to meet these abruptly end.

Friends and family members providing care may also require a carer's assessment. If the carer has no lawful status, a human rights assessment will also be required to determine whether care and support (including a direct payment/ individual budget) can be provided. For more information about support for carers, see chapter 8.

5.5 Direct payments

Any person requiring care may request that they are given a direct payment to arrange their own care and support by employing a carer or using a home care agency.

When a person requests a direct payment, the local authority must make a decision whether to provide this in line with the Care and Support (Direct Payments) Regulations 2014 and Chapter 12 of the Care and Support Statutory Guidance. The Regulations do not prohibit the local authority from providing a direct payment to a person with no recourse to public funds.

When a person with no recourse to public funds is accommodated under the Care Act, usually their care and support will be arranged by the local authority. However, a person with no recourse to public funds who is receiving care and support in the community may request a direct payment to arrange their own care.

When a person decides to use a direct payment to employ a carer directly, they must register as an employer. In order to do this, they would need to have a bank account and a National Insurance number. They will also be required to undertake a right to work check on a prospective employee, in line with the government guidance: Right to work checks: an employer's guide.

Therefore, when deciding whether to provide a person with a direct payment, the local authority may need to consider whether the person's immigration status allows them to open a bank account or obtain a National Insurance number if they intend to employ a carer directly.

5.6 Financial assessments

When the local authority has determined that a person requires care and support, it will normally undertake a financial assessment to establish how much the person has to pay towards the cost of their care.

The Government has not made separate charging provisions for people who have no recourse to public funds or other non-UK nationals. Therefore, a financial assessment for a person with no recourse to public funds must be undertaken in the usual way, in line with the Care and Support (Charging and Assessment of Resources) Regulations 2014 and chapter 8, Annex B and Annex C of the Care and Support Statutory Guidance. The local authority will decide whether to undertake a 'light-touch' or full financial assessment.

5.6.1 'Light-touch' assessments

A 'light-touch' financial assessment involves treating the person as if a financial assessment had been carried out. This would normally apply when a person clearly has sufficient resources to fully fund their care or when an individual is in receipt of benefits and, therefore, would not be able to contribute towards their care and support costs.

When a person with no recourse to public funds is presenting as destitute and is, or would be, reliant on the local authority to provide accommodation and subsistence support, it would normally be appropriate to undertake a light-touch assessment. The person's financial circumstances are likely to have already been considered if emergency accommodation has been provided pending the outcome of the needs assessment.

5.6.2 Full financial assessments

When a full financial assessment is undertaken the income of the person requiring care must be considered.

Annex B of the Care and Support Statutory Guidance states:

- 5) Only the income of the cared-for person can be taken into account in the financial assessment of what they can afford to pay for their care and support.

A full financial assessment may be required when a person with no recourse to public funds is living with family members, has recently been working, or has recently entered the UK with a type of leave that is only issued by the Home Office when financial requirements are met.

For example, when a person obtains leave to enter the UK in order to visit, work, or study, or to join family members, they will usually have to satisfy maintenance requirements and may need to show that they have a minimum level of funds available to them to cover their accommodation and basic living costs. They will usually be subject to a No Recourse to Public Funds (NRPF) condition. In the case of a person who is granted indefinite leave to remain as an adult dependant relative, their sponsoring relative in the UK will have signed an

undertaking as part of the visa application process in order to confirm that the person's accommodation and basic living needs will be met for the first five years of their residence in the UK.

However, there is no requirement for a sponsoring family member to fund social care when a visa holder qualifies for care and support. Social care is not a 'public fund' for immigration purposes and the financial assessment must only take account of the resources of the person who is receiving care and support. Therefore, the local authority cannot expect a sponsoring family member, or the relative the person who requires care is joining, to cover the costs of care and support. Instead, the individual requiring care must be assessed in the usual way in line with the Regulations and statutory guidance.

The local authority may take into account any 'notional income' in its assessment, which is income that is available to the person that has not yet been applied for, such as a benefit. When a person is subject to a 'No Recourse to Public Funds' (NRPF) condition, they will not be able to claim most benefits, which can therefore not be relied on as notional income. For more information about which benefits are 'public funds', see the NRPF Network website.

6. Withdrawing support

This chapter sets out how to comply with the Care Act 2014 and the Care and Support Statutory Guidance when accommodation and financial support is withdrawn.

6.1 Withdrawing accommodation and financial support provided under the Care Act

The provision of accommodation and financial support under the Care Act will need to continue until the person's circumstances change in one of the following ways:

- A review of the person's care and support needs finds that their needs have reduced to the extent that they no longer meet the eligibility criteria and the local authority has decided that section 19(1) is not engaged to meet non-eligible care and support needs
- The person becomes eligible for Home Office asylum support, does not require residential care, and a transfer to this accommodation is compliant with the person's well-being
- The person's immigration status changes so that they are able to access benefits and homelessness assistance under Part VII of the Housing Act 1996.
- A human rights assessment concludes that a person without lawful status can return to their country of origin to avoid destitution in the UK, so care and support can no longer be provided.

6.1.1 Transfers to alternative accommodation

Whilst a person with no recourse to public funds is receiving ordinary accommodation (rather than supported accommodation or residential care) to meet their care and support needs, their immigration circumstances may change enabling them to access alternative accommodation. For example, if the person claims asylum, they will usually qualify for section 95 asylum support and the Home Office, rather than local authority will be required to meet their accommodation needs. If the person is granted leave to remain with access to public funds, they will be able to apply to the Department of Work and Pensions (DWP) for benefits and a housing authority for temporary accommodation under Part VII of the Housing Act 1996.

In such cases, adult social care will no longer be required to meet the person's accommodation and financial needs under the Care Act when alternative housing and financial support is in place. In order to comply with the Care and Support Statutory Guidance, adult social care should not withdraw support until the person's needs are met by the relevant service (Home Office, or DWP and the housing authority).

The Care and Support Statutory Guidance states:

10.24 There may be other services to which a person is entitled under other legislation (but which could also be provided as part of the provision of care and support), which a local authority is not specifically prohibited from providing under the Act. Where there is a risk of overlapping entitlements (for example, where 2 different organisations may be under a duty to provide a service in relation to the same

needs), local authorities should take steps to support the individual to access the support to which they are entitled under other legislation. This may include, for example, helping the person to access some disability-related benefits and allowances.

...

10.25 The duty to meet eligible needs is not discharged just because a person has another entitlement to a different service which could meet those needs, but of which they are not availing themselves. The needs remain 'unmet' (and so the local authority remains under a duty to meet them) until those needs are actually met by the relevant service being provided or arranged. Local authorities should therefore consider how to inform and advise people on accessing any such entitlements at the earliest stage possible, as well as working collaboratively with other local services to share information.

As soon as the person's immigration status changes, it will usually be necessary to undertake proactive steps to assist the person to access alternative support, such as by:

- Making a referral to a housing authority (in compliance with the duty to refer)
- Assisting the person to make a claim for benefits, apply for a National Insurance number and/or open a bank account, as required
- Assisting the person to access welfare rights advice, especially if their entitlement to benefits may not be clear or is disputed by the DWP
- Chasing up an outstanding asylum support application with the Home Office

A notice period may need to be issued to the person to demonstrate to the Home Office or housing authority that their accommodation and financial support will be withdrawn. In such cases, the person would need to be reassured that their accommodation and financial support will not be withdrawn until the transfer to alternative support is in place, as this may take several weeks to arrange.

Section 6(4) of the Care Act requires adult social care and housing authorities to co-operate in order to promote the well-being of people with needs for care and support. Therefore, collaborative working between adult social care and housing officers (including those within another local authority) will be required to ensure that a transfer to temporary accommodation is undertaken without adversely affecting the person's well-being or disrupting their package of care and support.

If the person moves to accommodation outside of the local authority's area, the usual procedure for transferring a person's care and support package to the receiving authority will need to be followed to ensure that their care is not interrupted. For more information about continuity of care, see section 3.2.10.

6.1.2 Duty to refer to a housing authority

The duty to refer requires adult social care and the NHS to refer a person who is threatened with homelessness within 56 days to a housing authority of the person's choice. For more information, see the government guide to the duty to refer.

6.1.3 Withdrawing accommodation when a person does not qualify for care and support

A person's accommodation and financial support may be withdrawn if they have been accommodated under section 19(3) of the Care Act pending the outcome of a needs assessment and the assessment concludes that they do not qualify for care and support under section 18 or 19(1).

A decision to withdraw accommodation and financial support could also be made when the local authority has determined that the person no longer qualifies for care and support following a reduction in their needs. In such cases, if a person's needs have stabilised to the extent that they do not meet the eligibility criteria, the local authority must consider whether any non-eligible care and support needs can be met under section 19(1). For more information about meeting non-eligible needs, see section 4.4.

When the local authority determines that a person does not qualify (or no longer qualifies) for care and support, it must record the assessment decision in writing and clearly communicate the outcome to the person receiving support. The decision must clearly state why the person is not eligible for care and support under section 18 and 19(1). The outcome must be clearly explained to the person, with any necessary steps taken to overcome communication barriers, such as using an interpreter.

The assessment outcome should clearly state why the person is not eligible, or no longer eligible for support. Any adverse findings must be put to them so that they may have a chance to respond. Any new information that comes to light after the decision, or any alternative explanations must be considered by the local authority. It is good practice for conversations with the person to have already taken place to prepare them for such an outcome.

If the person still has no recourse to public funds when accommodation and financial support is withdrawn, adult social care will need to identify whether there are any alternative support options available and may need to assist the person to access these. For more information about alternative accommodation options, see chapter 12.

The person would need to be issued with a reasonable notice period before their accommodation and financial support is withdrawn. The notice period that is given should take into account the individual's circumstances. If the person is in the process of applying for alternative support, such as Home Office asylum support, a flexible approach would need to be taken to extend their current accommodation until their new support is in place.

Local authorities using NRPF Connect would need to close cases once support has been withdrawn in order to ensure that the Home Office is informed that the authority is no longer involved in supporting the individual.

When care and support is being withheld or withdrawn following a human rights assessment, which has concluded that the person can return to their country of origin to avoid destitution in the UK, the local authority would need to offer assistance with return. For more information, see the NRPF Network practice guidance: when and how to undertake a human rights assessment.

It will be necessary to develop a local signposting list that can be given to the person when support is terminated. This could include information about:

- Local immigration and welfare rights advice services
- Local Voluntary and Community Sector services providing advocacy, accommodation and/or destitution support
- Home Office asylum support
- Home Office voluntary returns service

7. Adult safeguarding

This chapter sets out how the safeguarding duty applies to a person who has no recourse to public funds and what additional steps may need to be considered in a safeguarding plan.

7.1 Safeguarding duty

Section 42 of the Care Act requires a local authority to undertake a safeguarding enquiry when it has reasonable cause to suspect that an adult in its area (whether or not they are ordinarily resident there):

- Has needs for care and support (whether or not the local authority is meeting any of those needs),
- Is experiencing, or at risk of, abuse or neglect, and
- As a result of those care and support needs is unable to protect themselves from either the risk of, or the experience of abuse or neglect.

The local authority must make any necessary enquiries to:

- Determine whether any action should be taken in the adult's case, including how any accommodation needs may need to be met
- Set out the required action
- Specify who is responsible for each action

A safeguarding enquiry, and any actions to prevent or stop abuse or neglect, can be undertaken regardless of a person's immigration status.

Schedule 3 of the Nationality, Immigration and Asylum Act 2002 does not prevent the local authority from undertaking a safeguarding enquiry and taking any necessary action to stop abuse or neglect when a person does not have lawful status. For more information about Schedule 3, see section 3.4.

7.2 Victims of domestic abuse and modern slavery

People with no recourse to public funds may be at a heightened risk of domestic abuse or exploitation due to their unsettled immigration status, lack of access to benefits and mainstream housing services, and, for those without any lawful status, a lack of access to lawful employment.

The Care and Support Statutory Guidance specifically references domestic abuse and modern slavery as examples of abuse:

14.17 Local authorities should not limit their view of what constitutes abuse or neglect, as they can take many forms and the circumstances of the individual case should always be considered; although the criteria at paragraph 14.2 [section 42 of the Care Act] will need to be met before the issue is considered as a safeguarding concern. Exploitation, in particular, is a common theme in the following list of the types of abuse and neglect.

...

Domestic violence including:

- psychological
- physical
- sexual
- financial
- emotional abuse
- so called 'honour' based violence

...

Modern slavery encompasses:

- slavery
- human trafficking
- forced labour and domestic servitude.
- traffickers and slave masters using whatever means they have at their disposal to coerce, deceive and force individuals into a life of abuse, servitude and inhumane treatment

When a person is identified as being a victim of domestic abuse or modern slavery the local authority must consider whether the person meets the criteria that triggers a safeguarding concern.

When a person is identified as being a potential victim of trafficking or modern slavery, the local authority must notify the National Referral Mechanism (NRM). For more information, see the Government's National Referral Mechanism guidance: adult (England and Wales).

7.3 Meeting accommodation needs

When a person has no recourse to public funds, the safeguarding plan must consider how their accommodation needs can be met if they are destitute, experiencing homelessness, or are living in an unsafe situation.

To determine the person's accommodation options, it may be necessary to undertake one or more of the following steps:

- Make a referral to the housing authority to determine whether the person is eligible for homelessness assistance under Part VII of the Housing Act 1996. For more information about the duty to refer, see section 6.1.2.
- Undertake a needs assessment to determine whether accommodation can be provided under the Care Act 2014 under section 18 (duty to meet care and support needs) or section 19(1) (power to meet non-eligible care and support needs). For more information about eligibility for care and support, see chapter 4.
- Identify whether accommodation is available through the NRM (if a referral has been made) or from the Home Office (if the person has previously claimed asylum)
- If the person does not qualify for support from adult social care, the NRM, or Home Office, make a referral to the housing authority or rough sleeper outreach team to

find out whether any discretionary powers enable the local authority to provide shelter. For more information about local authority support, see chapter 12.

- Identify whether specialist support may be available from the voluntary sector, such as the Support for Migrant Victims Scheme for people with no recourse to public funds experiencing domestic abuse See the NRPF Network website for more information.

When a person presents with an appearance of need, emergency accommodation can be provided under section 19(3) of the Care Act pending the outcome of a needs assessment. A formal diagnosis of a medical condition is not required to demonstrate that a person has an appearance of need. A person who has been subjected to domestic abuse, trafficking, or modern slavery may experience health or mental health problems that have not been diagnosed, so in many cases medical evidence may not be readily available. For more information about meeting urgent needs, see section 3.3.

8. Support for carers

This chapter sets out the additional considerations that may need to be made when a person with no recourse to public funds is providing care and requests assistance from the local authority.

8.1 Duty to provide care and support to a carer

The Care Act 2014 contains a duty to provide care and support to a person providing care to an adult. Sections 10(1) and (4) state that a carer's assessment must be undertaken when there is an appearance of need, whether currently or in the future, and regardless of the level of need or the carer's financial resources. A person requiring care and support and their carer may request a combined needs assessment.

Eligibility must be considered under the Care and Support (Eligibility Criteria) Regulations 2015 and the well-being duty also applies to carers. Under section 20(1) of the Care Act the local authority must meet a carer's eligible needs for support, as set out in a care and support plan, and section 20(6) sets out a power to meet non-eligible needs. Ordinary residence requirements apply. Section 20(7) allows for a carer's needs to be met by providing care and support to the person they are caring for, even if that person does not have eligible needs themselves.

Section 21(4) prevents local authorities from providing care and support to a person who is subject to immigration control in order to meet a carer's needs for support, where the person's needs for care and support have arisen solely due to destitution or the physical effects of destitution. Therefore, the immigration status of the person requiring care and support must be established to determine whether this may apply. For more information about the 'destitution exception' see section 4.5.

8.2 The carer's immigration status

It will be necessary to establish the immigration status of a carer who requests care and support as early as possible in order to:

- Determine whether Schedule 3 of the Nationality, Immigration and Asylum Act 2002 applies, which may restrict the provision of care and support when a carer has no lawful status
- Consider whether a direct payment is an appropriate way of meeting the carer's needs
- Consider whether it is appropriate to rely on a carer without a settled form of immigration permission to provide unpaid care to a person who is eligible for care and support

8.2.1 Schedule 3 Nationality, Immigration and Asylum Act 2002

The provision of any support or assistance to a carer under section 20 of the Care Act will be subject to a human rights assessment when the carer is without lawful status in the UK or is otherwise in a group excluded by Schedule 3 of the Nationality, Immigration and Asylum Act 2002.

This means that the local authority will only be able to meet a carer's care and support needs when it has determined that the carer is unable to return to their country of origin to avoid a human rights breach in the UK. For example, a carer's needs can be met if the carer has a pending immigration application or there is another barrier preventing them from leaving the UK. For more information about when Schedule 3 will apply to a carer and how to carry out a human rights assessment, see section 3.4.

Schedule 3 does not prevent the local authority from undertaking a carer's needs assessment.

8.2.2 Direct payments

When the local authority has determined that it has a duty to meet a carer's needs, or will exercise its power to meet needs on a discretionary basis, a direct payment can be provided if the carer requests this to arrange their own support.

There is nothing preventing the local authority from providing a direct payment to a carer who has no recourse to public funds, including to a carer who does not have any lawful status in the UK (when a human rights assessment has determined that the carer cannot reasonably be expected to return to their country of origin). However, the carer's lack of lawful status may make it difficult for them to arrange their own support. For more information about direct payments, see section 5.5.

8.2.3 Providing unpaid care

Where a carer, who does not have a form of settled immigration permission, is providing unpaid care to a friend or family with care and support needs, the local authority will need to consider whether it is appropriate to rely on the carer being able to meet the person's needs on a long-term basis. If so, it must regularly review the situation and consider how the person's needs can be met should the carer's circumstances suddenly change. For more information about friends and family care, see section 5.4.

9. Hospital discharge

This chapter provides information to help establish what actions may need to be taken when a patient with no recourse to public funds who is experiencing homelessness is in hospital. Planning for a safe discharge should be started as early as possible after a hospital admission.

9.1 Discharge process

NHS bodies and local authorities exercising health and adult social care functions in England will need to refer to the Department of Health and Social Care guidance: Hospital Discharge and Community Support Guidance to inform local service planning and delivery when adults are discharged from acute hospitals and community rehabilitation units (excluding maternity patients). Mental health trusts are encouraged to embed some of the principles set out in the guidance and adapt these for mental health care pathways. The NHS and local authorities can jointly fund and commission services through the Better Care Fund to support multi-disciplinary practice.

The Hospital Discharge and Community Support Guidance reflects the changes to hospital discharge processes implemented by the Health and Care Act 2022. The changes provide more flexibility for local authorities and the NHS to implement different types of discharge plans, including a 'Discharge to Assess, Home First' model. The Health and Care Act amends section 74 and repeals Schedule 3 of the Care Act 2014 (assessment notices and delayed discharge).

The Hospital Discharge and Community Support Guidance states:

From 1 April 2022, [NHS bodies and local authorities] should adopt discharge processes that best meet the needs of the local population. This could include the Discharge to Assess, Home First approach. Systems should work together across health and social care to jointly plan, commission, and deliver discharge services that are affordable within existing budgets available to NHS commissioners and local authorities, pooling resources where appropriate.

With regards to patients who are homeless, the guidance states:

Where there are ongoing health, housing or social care needs after discharge with different care options available, individuals (and, where relevant, their family, unpaid carers or advocates) should be empowered and supported to make the best choice for their individual circumstances.

Transfer of care hubs should incorporate appropriate safeguards for individuals who require this. For example, people who are homeless, at risk of homelessness or living in poor or unsuitable housing should be determined on admission to hospital...

Health and social care professionals should follow an ongoing commitment to reducing health disparities and inequalities and consider the needs of groups that might need specialised support. This includes, but is not limited to, understanding issues relevant to people from black, Asian and minority ethnic groups, LGBTQI, faith or cultural needs, people living with disabilities, autistic people, older people, unpaid

carers, people who do not speak English, and those with specific communication needs. (Chapter 14)

Further information relating to hospital discharge processes can be found in the guidance: Managing transfers of care – A High Impact Change Model, which has been developed by government, the NHS, and local government partners.

9.2 Discharge planning when a patient has no recourse to public funds

Section 6 of the Care Act requires local authorities and NHS bodies to cooperate when exercising their functions relating to adults with needs for care and support. Section 82 of the National Health Service Act 2006 requires local authorities and NHS bodies to cooperate when exercising their respective functions, in order to secure and advance the health and welfare of their local population.

The Hospital Discharge and Community Support Guidance states:

Local areas should develop and implement the hospital discharge model that best meets the needs of their local population that are affordable within existing budgets available to NHS commissioners and local authorities. Discharging an individual onto the right care pathway when they no longer need to remain in hospital requires a whole system approach. NHS organisations should work closely with adult social care, children's social care, care providers, housing, the voluntary sector and others to ensure people's care and treatment is timely, optimal and coordinated, while also minimising delays when they are ready to be discharged. (Chapter 4)

Any discharge model should address the needs of patients who are experiencing homelessness, including those with no recourse to public funds, and will require health, social care, and housing practitioners to work closely together to ensure that the right pathways for an individual are identified and followed. When a patient with no recourse to public funds is experiencing homelessness, the local authority will need to demonstrate that it has considered all legal duties and powers that may enable accommodation to be provided.

It will be important to identify whether a patient has (or may have) no recourse to public funds and whether they are experiencing homelessness as soon as possible after their admission. As well as ensuring that any relevant assessments of need are undertaken, it will be necessary to clarify who will be responsible for assisting the patient to access immigration advice or any other non-health/ social care services that they may require, and for establishing what alternative housing options may apply, should the person not qualify for care and support or continuing healthcare.

Some hospitals will be operating a Discharge to Assess, Home First model, where an assessment for care and support or continuing healthcare is carried out after the person has been discharged to their home, rather than whilst they are in hospital. The Hospital Discharge and Community Support Guidance states that it is best practice for a needs assessment to be undertaken in a person's home to determine their long-term care needs. Depending on a patient's care needs, they may be discharged to a 'step-down' bed to receive ongoing healthcare. Under this model, patients with no recourse to public funds who

are experiencing homelessness could be placed in a step-down bed or provided with alternative temporary accommodation whilst the needs assessment is completed.

9.2.1 Assessing need under the Care Act 2014

When a patient, who has no recourse to public funds, is experiencing homelessness and is recovering from a condition that has been treated by the NHS, the Care Act needs assessment will be the first step in determining the support options that are available to them. Where a person with no recourse to public funds has care and support needs arising from a physical or mental impairment or illness, accommodation and financial support can be provided under the Care Act.

The Hospital Discharge and Community Support Guidance states:

Local authorities have duties to assess and meet people's eligible care needs in relevant circumstances and these assessments should be conducted in a timely manner, in accordance with their Care Act 2014 duties. (Section 7)

Adult social care must therefore determine whether the person has 'an appearance of need' and can refer to information provided by NHS colleagues to inform its decision to undertake a needs assessment. Where a person has ongoing health needs, it is highly unlikely that they will fail to meet this threshold. For more information about the duty to assess, see section 3.1.

Healthcare professionals will play an important role supporting Care Act assessments undertaken by adult social care by providing any medical and/or therapist reports that are relevant. Such medical reports will highlight how a patient's health is impacting on their ability to manage activities of daily living and also how homelessness could impact on the person's recovery or ongoing treatment plan. The input of NHS staff will therefore help to inform adult social care's analysis of whether the person has eligible care and support needs under section 18 of the Care Act, or whether the power to meet non-eligible care and support needs should be engaged under section 19(1). For more information about assessing need, see chapter 4.

When a person is being discharged from hospital, or is exiting a step-down placement, it may be necessary for adult social care to provide emergency accommodation under section 19(3) of the Care Act whilst the needs assessment is being completed. For more information about meeting urgent needs pending the outcome of the care assessment, see section 3.3.

9.2.2 Step-down accommodation

Where a Discharge to Assess, Home First model is being followed, a person with no recourse to public funds may be provided with step-down accommodation following their discharge from acute care.

The Hospital Discharge and Community Support Guidance states:

People who are homeless or at risk of homelessness should not be excluded from short-term post-discharge recovery and support because of their housing status. (Section 14)

Whilst a person with no recourse to public funds is in a step-down placement and their needs assessments are being undertaken, responsibility must be undertaken for effective step-down planning. This may involve assisting the patient to access immigration advice or any other non-health/ social care services that they may require, and establishing what alternative housing options may apply, should the person not qualify for care and support or continuing healthcare. A multi-disciplinary approach will ensure best use of step-down placement funding, so that alternatives to homelessness are found.

Part two: other support options for people with no recourse to public funds

10. Mental health aftercare

This chapter sets out when a person can be provided with aftercare, including supported accommodation, under section 117 of the Mental Health Act 1983.

Aftercare services are not classed as a public fund for immigration purposes and can be provided to a person regardless of their immigration status. Therefore a person with no recourse to public funds should not be refused aftercare solely on the basis of their immigration status or lack of access to benefits. Schedule 3 of the Nationality, Immigration and Asylum Act 2002 does not apply to section 117, so a human rights assessment should not be undertaken when a person who is without lawful status in the UK qualifies for aftercare.

Additionally, the Department of Health and Social Care has also clarified in the Overseas NHS visitors: implementing the charging regulations guidance that aftercare services are not chargeable to overseas visitors.

10.1 When can aftercare be provided?

A person who has been detained (sectioned) in order to undergo urgent treatment for a mental health condition may qualify for aftercare when their detention ends and they leave hospital.

A person will be eligible for aftercare services if they were admitted to hospital under one of the following provisions of the Mental Health Act 1983:

- Section 3 (detained in hospital for treatment)
- A hospital order made under section 37 or 45A (ordered to go to hospital by a court)
- Section 47 or 48 (transferred from prison to hospital)

Aftercare services are defined at section 117(6) of the Mental Health Act 1983, as follows:

In this section, “after-care services”, in relation to a person, means services which have both of the following purposes—

- (a) meeting a need arising from or related to the person’s mental disorder; and
- (b) reducing the risk of a deterioration of the person’s mental condition (and, accordingly, reducing the risk of the person requiring admission to a hospital again for treatment for mental disorder).

Therefore, aftercare services must meet a need arising from or related to the person’s mental disorder with the purpose of reducing the risk of deterioration in the condition and therefore reduce the risk of readmission to hospital for treatment for the disorder.

Aftercare services are jointly arranged and provided by the NHS Clinical Commissioning Group (CCG) (Integrated Care Board) and local authority (adult social care).

The NHS will usually be responsible for providing any health-related services and the local authority will usually provide the social care element.

When assessing eligibility and providing aftercare, the CCG and local authority must follow the Mental Health Act 1983: Code of Practice. The Parliamentary and Health Service Ombudsman and the Local Government and Social Care Ombudsman have also issued guidance for CCGs and local authorities in order to clarify their responsibilities.

Patients with no recourse to public funds who are experiencing homelessness will need to be identified at the point of admission, so that planning for their aftercare, including how their accommodation needs may be met is undertaken in good time prior to discharge. For more information about which local authority will be responsible for providing aftercare, see section 3.2.6.

The Code of Practice states:

33.10 Although the duty to provide after-care begins when the patient leaves hospital, the planning of after-care needs to start as soon as the patient is admitted to hospital. CCGs and local authorities should take reasonable steps, in consultation with the care programme approach care co-ordinator and other members of the multidisciplinary team to identify appropriate after-care services for patients in good time for their eventual discharge from hospital or prison.

A comprehensive assessment of the person's needs using the Care Programme Approach must be undertaken and a care plan prepared, which should record whether the person is entitled to Section 117 aftercare and what services will be funded on this basis. The Code of Practice states that the care plan must include 'support provided in relation to social needs such as housing, occupation, finances etc.' (Paragraph 34.3)

10.2 When can accommodation be provided under section 117?

The CCG and local authority have a broad discretion to determine what services can be provided as aftercare.

The Code of Practice provides examples of the types of services that aftercare can encompass:

33.4 CCGs and local authorities should interpret the definition of after-care services broadly. For example, after-care can encompass healthcare, social care and employment services, supported accommodation and services to meet the person's wider social, cultural and spiritual needs, if these services meet a need that arises directly from or is related to the particular patient's mental disorder, and help to reduce the risk of a deterioration in the patient's mental condition.

Aftercare can include the provision of accommodation, when that is required for the purpose of meeting a need arising from or related to the patient's mental disorder and will help to reduce the risk of their mental condition deteriorating. It is most likely that this would be limited to supported or specialist accommodation that will meet the person's mental health-related needs, rather than ordinary accommodation, such as a private-rented flat.

Therefore, when a person with no recourse to public funds who is experiencing homelessness is being considered for aftercare, the CCG and local authority would need to determine whether supported or specialist accommodation is required. This decision must be based on an assessment of the person's mental health-related needs.

When a person is provided with accommodation under section 117, they will also require financial support (subsistence payments). Financial support can be provided as part of the aftercare package. The local authority may wish to incorporate this group within in any policy that has been established to set basic levels of subsistence support for people who are supported under the Care Act. For more information about subsistence payments, see section 5.3.

When a person is accommodated under section 117, the local authority must ensure that steps are taken to identify and assist the person to establish a long-term route out of homelessness, such as accessing immigration advice to make an application to the Home Office. If no such action is taken, when the individual's needs reduce to the extent that supported accommodation is no longer required under section 117 or they no longer require for aftercare services, the person may face homelessness and the local authority may find withdrawing accommodation more challenging. For more information about pathways off support, see chapter 13.

If the person continues to qualify for other aftercare services following the withdrawal of their supported accommodation, the local authority will need to determine whether accommodation can be provided under the Care Act. If the person has no lawful status, such a decision will also be subject to a human rights assessment. For more information about eligibility for care and support see chapter 4.

10.3 Ending aftercare services

The duty to provide aftercare services exists until both the CCG and local authority are satisfied that the patient is no longer in need of such services. Any change in the person's needs is most likely to be identified when aftercare services are reviewed, either following a planned review or a change in circumstances.

With regards to timeframes for undertaking a review, the Ombudsman guidance states:

Eligibility for Section 117 should be reviewed within six weeks of discharge from in patient services, then annually thereafter, or sooner if circumstances change. The care coordinator is responsible for arranging these reviews and involving the person and other relevant parties. Often, CPA reviews do take place but Section 117 aftercare is not monitored (and documented) as it should be. (Page 4)

The failure to properly end aftercare services, when a person is no longer in need of such services, may mean that the local authority retains responsibility for providing aftercare should the person subsequently be readmitted to hospital under the Mental Health Act. For more information about responsibility for providing aftercare, see section 3.2.6.

The Code of Practice states that after-care services may be reinstated if it becomes obvious that they have been withdrawn prematurely. (Paragraph 33.22)

When preparing to discharge a person from aftercare accommodation, regard should be given to their immigration status and entitlement to public funds, so that the correct referrals can be made to prevent the person from becoming homeless. Adult social care will usually need to undertake a Care Act needs assessment to determine whether the person qualifies for care and support, including accommodation. Accommodation can be provided by adult social care whilst the needs assessment is being undertaken. For more information about assessing need, see chapter 4.

11. NHS-funded care

This chapter sets out when a person with no recourse to public funds can be provided with continuing healthcare, including accommodation, or NHS-funded nursing care.

Continuing healthcare and funded nursing care are not classed as a public funds for immigration purposes. The Department of Health and Social Care has confirmed in chapter 4 of the guidance on implementing the overseas visitor charging regulations that NHS continuing healthcare and funded nursing care are not subject to charging for overseas visitors. This means that such care can be provided by the NHS free of charge to a person, regardless of their immigration status and should not be refused to a person solely on the basis of their immigration status or lack of access to benefits.

11.1 Continuing healthcare

A person with long-term complex health needs may qualify for continuing healthcare, which is free social care arranged and funded solely by the NHS. Continuing healthcare can be provided in a person's own home or care home.

An initial assessment can be carried out by a nurse, doctor, other healthcare professional or social worker. If the person meets the criteria for a full assessment, a multidisciplinary team of healthcare professionals will fully assess the person's needs in order to determine whether they qualify for continuing healthcare. A person will usually qualify for continuing health care if they have at least one priority need, or severe needs in at least two areas, or may qualify if they have a severe need in one area and a number of other needs.

When a person with no recourse to public funds who is experiencing homelessness qualifies for continuing healthcare, it would fall to the NHS to provide and fund their accommodation as part of the continuing healthcare package.

More information about continuing healthcare is available at the NHS website (<https://www.nhs.uk>).

11.2 Funded nursing care

When a person is not eligible for continuing healthcare but is assessed as requiring nursing care in a care home (which is registered to provide nursing care), the NHS will pay a contribution towards the cost of the person's registered nursing care.

NHS-funded nursing care is available irrespective of who is funding the rest of the care home fees.

When a person with no recourse to public funds who is experiencing homelessness qualifies for NHS-funded nursing care, then the local authority will need to fund the nursing home placement under the Care Act 2014.

More information about funded nursing care is available at the NHS website (<https://www.nhs.uk>).

12. Local authority powers and duties to provide accommodation

This chapter sets out the powers and duties that enable a local authority to provide accommodation to a person with no recourse to public funds in addition to those that are set out in the Care Act 2014. These powers would need to be considered when adult social care determine that the person does not have care and support needs. In order to provide a holistic response and ensure that all the available support options for an individual are considered, joint working between social care, the housing authority, and, in some cases, public health, will be required.

12.1 Provision of advice and information

A housing authority must provide free advice and information about the help that is available for people who are homeless or threatened with homelessness, which everyone in the area can access, including people who are ineligible for homelessness assistance under Part VII of the Housing Act 1996 due to their immigration status.

When a person is found to be ineligible for Part VII assistance, the housing authority must issue a 'section 184' decision letter that clearly explains why the person is not eligible. A person can request a review of the decision and may need to be signposted to a housing law specialist if they think that the decision may be incorrect.

When a person is found to be ineligible for Part VII assistance, the housing authority should not turn the person away without giving them appropriate signposting information, and/or making a referral to an alternative support service that the person is identified as being entitled to. For example, it may be necessary to refer the person to adult social care, Children's Services, Migrant Help to access Home Office support, or accommodation provided by the voluntary or community sector.

The Homelessness Code of Guidance for local authorities states:

3.1 Housing authorities have a duty to provide or secure the provision of advice and information about homelessness and the prevention of homelessness, free of charge. These services will form part of the offer to applicants who are also owed other duties under Part 7, for example the prevention and relief duties. They must also be available to any other person in their district, including people who are not eligible for further homelessness services as a result of their immigration status. The provision of up to date, comprehensive, tailored advice and information will play an important part in delivering the housing authority's strategy for preventing homelessness.

3.2 Housing authorities may wish to consider providing information for those who are ineligible for further homelessness services on how to access any other assistance available in the area, for example through charitable or faith groups.

7.2 Housing authorities have a duty to provide or secure the provision of advice and information about homelessness and the prevention of homelessness, free of charge which must be available to any person in their district. All applicants, including those who are ineligible as a result of their immigration status, will be able to access this

form of assistance from the housing authority. Housing authorities should refer applicants to appropriate support which they may be entitled to where relevant.

12.2 Families with a child under 18

The local authority can provide accommodation and financial support to a family with no recourse to public funds under section 17 of the Children Act 1989. A child will be in need if they are homeless or their parents do not have sufficient resources to be able to provide for their housing and/or basic living needs. Accommodation and financial support can be provided to the family as a whole.

Schedule 3 of the Nationality, Immigration and Asylum Act 2002 applies to the provision of accommodation and financial support to a family under section 17. Therefore, when a parent is without lawful immigration status, Children's Services will also undertake a human rights assessment in addition to the child in need assessment. For more information about Schedule 3, see section 3.4.

A referral to Children's Services (or the No Recourse to Public Funds team) would need to be made to request a child in need assessment. Accommodation can be provided by Children's Services pending the outcome of the needs assessment. For more information, see the NRPf Network practice guidance: Assessing and supporting families with no recourse to public funds.

12.3 Care leavers

It will be necessary to ask a young person who is under 25-years-old who has no recourse to public funds and is experiencing homelessness if they have previously been in local authority care, as this may be a route for them to access accommodation or assistance with accessing accommodation from a personal adviser. In such cases, a referral would need to be made to children's social care at the local authority responsible for their care.

Local authorities are well known to care for unaccompanied asylum-seeking children but may also look after children who are following other immigration routes, including children who are European Economic Area (EEA) citizens or family members of EEA citizens.

When a former looked after child qualifies for leaving care support, Children's Services will be required to provide accommodation and financial support if the young person's immigration status prevents them from accessing benefits or housing assistance. Duties to provide such support are time-bound and are set out in the Children Act 1989.

The local authority will have a duty to provide:

- Accommodation and financial support to a care leaver until they are age 21 (section 23C) or age 25 when they are on a course of education or training (section 23CA)
- Personal adviser support from age 21 to 25 if the young person requests this (Section 23CZB)

Although adult asylum seekers who are destitute can access support from the Home Office, the responsibility to provide accommodation and financial support to a former looked after child remains with the local authority until leaving care duties are discharged, even though Home Office funding only continues for three months after a young person becomes Appeal

rights Exhausted. (See: *SO v London Borough of Barking and Dagenham* [2010] EWCA Civ 1101).

Department for Education guidance, extending personal adviser support to age 25, states that section 23CZB does not introduce a duty to accommodate. Therefore, if a care leaver is age 21 to 25, they may only be able to get help from a personal adviser to access accommodation, rather than housing provided by children's social care.

Schedule 3 of the Nationality, Immigration and Asylum Act 2002 applies to the provision of leaving care support and personal adviser assistance from age 21 to 25. Therefore, when a former looked after child turns 18 and is without lawful status, Children's Services will undertake a human rights assessment. If leaving care duties are discharged before the young person has turned 21 or 25 on the basis that they can return to their country of origin to avoid destitution in the UK, the local authority that was responsible for providing leaving care services would need to review its human rights assessment if the young person's circumstances subsequently change. For more information about human rights assessments, see section 3.4.

12.4 Adults without care needs who are homeless

The Government has committed to end rough sleeping by 2024 and has made funding available to councils for this purpose, including through the Rough Sleeping Accommodation Programme 2021-24. Mayoral officers, and regional and local government organisations may also have strategies in place to end rough sleeping, with financial investment in services being made in order to deliver this outcome.

This work builds on responses that were established during the Covid-19 public health emergency through 'Everyone In', when the Government instructed councils to provide accommodation to people who were at risk of rough sleeping, regardless of immigration status, in order to protect lives.

Despite the intent to end rough sleeping, the law with regards to immigration status has not changed and no recourse to public funds conditions continue to apply. Government guidance relating to providing support to non-UK nationals experiencing homelessness is clear that local authorities must decide what assistance can be provided to an individual based upon an assessment of the person's immigration status, circumstances, and needs. Local authorities are expected to consider all duties and powers (as outlined in this guidance) that may be available to them to accommodate a person who is ineligible for Part VII homelessness assistance. This includes ensuring that, when applicable, duties to provide accommodation under the Children Act 1989 and Care Act 2014 are enacted to support families, care leavers and adults with care and support needs. When such duties are not engaged, the local authority must consider other legal powers that may enable accommodation to be provided.

The Courts identified which legal powers a local authority could exercise at time of national emergency, in this case, the Covid-19 pandemic, to provide accommodation to a person who is ineligible for Part VII homelessness assistance and support under the Care Act 2014. These powers generally have limited scope outside of a public health emergency.

The powers identified by the Courts are:

- Section 2B National Health Service Act 2006
- Section 138 Local Government Act 1972

The Government has also advised housing authorities that section 1 of the Localism Act 2011 (the general power of competence) can be used in certain circumstances to provide shelter to non-UK nationals who are at risk of rough sleeping.

These powers cannot be used to simply circumvent immigration-related restrictions imposed on the provision of accommodation under other legislation, such as Part VII of the Housing Act 1996. Additionally, the local authority can take into account its available resources to determine whether these powers are exercised.

As grant funding targeted at responses to end rough sleeping has generally been provided to housing authorities, decisions regarding the exercise of these powers will usually fall to a housing needs or rough sleeper outreach service, rather than adult social care or a no recourse to public funds team. However, in order to provide a person-centred response, partnership working will be necessary between partnership working between departments and any external organisations engaged with the individual will be necessary and responsibilities may need to be defined.

There are clear benefits to individuals and communities when people who would otherwise be rough sleeping can be accommodated as part of a homelessness intervention. In the research report, *Unlocking the door: a roadmap for supporting non-UK nationals facing homelessness in England*, Homeless Link and the No Accommodation Network, make recommendations with regards to how local authorities can continue to support non-UK nationals at risk of rough sleeping beyond the Covid-19 pandemic. The report highlights the value that a period of stable accommodation provides, allowing a person to engage with services, including immigration advice, in order to establish a long-term solution to their homelessness and to address other support needs, such as those relating to mental and physical health, or drug and alcohol dependence.

At a strategic level, local authority departments (or two-tier authorities) may need to work together to establish whether any funding that is made available, such as through public health or out of hospital care/hospital discharge programmes, can be drawn on to meet the accommodation needs of certain groups with no recourse to public funds.

12.4.1 Section 2B National Health Service Act 2006

Under section 2B of the National Health Service Act 2006, the local authority has a target duty to take steps to improve the health of the people in its area. This can include providing:

- Services or facilities for the prevention, diagnosis or treatment of illness
- Assistance (including financial assistance) to help individuals to minimise any risks to health arising from their accommodation or environment

In the case of *Ncube v Brighton and Hove City Council* [2021] EWHC 578, the Court found that taking steps to improve the health of residents could include the provision of emergency accommodation to meet a public health need through 'Everyone In', or any future initiative intended to save lives. The Court also referred to other examples of when accommodation may be provided by a local authority to address a public health need, such as residential drug or alcohol treatment centres, in-patient mental health facilities, and seasonal death reduction

initiatives, such as the severe weather protocol accommodation. These examples are specified in the Department of Health and Social Care local authority circular: public health ringfenced grant 2022 to 2023.

To engage section 2B, the local authority would need to be clear that it is seeking to meet a public health need (of an individual or its area's general population) by providing accommodation and is not circumventing the limitations on providing accommodation to a person who is found to be ineligible for Part VII homelessness assistance under section 185 of the Housing Act 1996. When determining whether section 2B is engaged, the local authority can take into account its limited resources and any other support that is available, such as Home Office accommodation.

Outside of a public health emergency, section 2B may need to be considered in individual cases when a person with no recourse to public funds requires accommodation for public health reasons. For example, when a person needs accommodation in order to undertake a course of tuberculosis (TB) treatment whilst they are contagious. Some local authorities and Clinical Commissioning Groups (Integrated Health Boards) have established agreements to source and fund accommodation for this purpose when such a person does not qualify for care and support under the Care Act 2014. Examples of such arrangements and practical information can be found in the Public Health England guidance: tackling tuberculosis in under-served populations.

The provision of services relating to the treatment of Covid-19, TB, and other communicable diseases by a local authority exercising its public health functions under the National Health Services Act 2006 are exempt from overseas visitors' charges.

Schedule 3 of the Nationality, Immigration and Asylum Act 2002 does not apply to support or assistance provided under section 2B of the National Health Service Act 2006 when a person is without lawful status in the UK. Therefore, provision of accommodation on this basis is not subject to a human rights assessment.

12.4.2 Section 138 Local Government Act 1972

Section 138 of the Local Government Act 1972 provides councils with a power to take action to avert, alleviate, or eradicate the effects or potential effects of an emergency or disaster that involves danger to life.

In *Ncube v Brighton and Hove City Council*, the Court found that section 138 will be engaged when the following four tests are met:

- (a) There has been an emergency or disaster or it is imminent or there is reasonable ground for apprehending such an emergency or disaster;
- (b) the type of disaster is one involving danger to life or property;
- (c) if so, whether the Council is of opinion that it is likely to affect its area or some of its inhabitants;
- (d) if so, the Council may incur such expenditure as they may consider necessary to avert, alleviate or eradicate its effects or potential effects. (Paragraph 46)

To engage section 138, the local authority would need to be clear that it is taking action to avert, alleviate, or eradicate the effects or potential effects of an emergency or disaster that involves danger to life by providing accommodation and is not circumventing the limitations on providing accommodation to a person who is found to be ineligible for Part VII homelessness assistance under section 185 of the Housing Act 1996. When determining whether section 138 is engaged, the local authority can take into account its limited resources and any other support that is available, such as Home Office accommodation.

Schedule 3 of the Nationality, Immigration and Asylum Act 2002 does not apply to support or assistance provided under section 138 of the Local Government Act 1972 when a person is without lawful status in the UK. Therefore, provision of accommodation on this basis is not subject to a human rights assessment.

12.4.3 Section 1 Localism Act 2011

Section 1 of the Localism Act 2011 (the general power of competence) provides a local authority with a power to do anything that an individual generally may do, and may exercise this power in any way, including for the benefit of residents.

The Courts have found that the general power of competence does not offer a broad basis to provide accommodation to a person who is ineligible for Part VII homelessness assistance, due to section 185 of the Housing Act 1996 providing a pre-commencement limitation (before Section 1 Localism Act 2011 became law) on the provision of accommodation. (See: *AR v London Borough of Hammersmith and Fulham* [2018] EWHC 3453, *R(Aburas) v Southwark & Ncube v Brighton and Hove Council*)

In *Ncube v Brighton and Hove City Council*, the Court recognised that in individual cases, the general power of competence may be engaged to provide shelter when a local authority identifies that failure to do so would give rise to a breach of human rights due to the person's particular circumstances.

In July 2021, the Department for Levelling Up, Housing and Communities issued guidance to housing authorities, advising that the general power of competence can be used to provide shelter to a non-UK national, but not replicate support to which they are barred by statute from providing, such as Part VII homelessness assistance. Local authorities can refer to this when determining what assistance can be provided to a non-UK national rough sleeper under section 1 of the Localism Act.

Schedule 3 of the Nationality, Immigration and Asylum Act 2002 applies when support or assistance can be provided under section 1 of the Localism Act to a person who is without lawful status in the UK or is in another excluded group. In such cases, where the local authority identifies that it would be necessary to use the general power of competence to provide shelter, or other support, to prevent a human rights breach, it must also consider the person's ability to return to their country of origin to avoid destitution in the UK. The local authority will be prevented from providing support under section 1 of the Localism Act if the person can reasonably be expected to return to their country of origin. For more information about applying Schedule 3 see section 3.4.

When shelter is given to a person with no recourse to public funds, usually a form of financial support (subsistence) will need to be provided to meet the person's basic living costs. However, a discretionary payment made by a council in England under section 1 of the

Localism Act 2011 constitutes a 'public fund' for immigration purposes, and therefore cannot be provided to a person who is 'subject to immigration control' (i.e. a person with no lawful status or who has leave to remain that is subject to a 'No Recourse to Public Funds' condition). When shelter is provided to such a person, the local authority will need to consider how to administer any financial support or meet the person's basic living needs in line with this restriction. For more information about which groups are 'subject to immigration control', see section 1.3.1.

12.4.4 Availability of alternative support

When considering whether the powers listed in this chapter can be used to provide accommodation to a person with no recourse to public funds, the local authority would need to identify whether the person has any alternative support options. Alternative support may be available from:

- The Home Office
- National Referral Mechanism
- Friends, family or the community

Home Office support

The Home Office can provide accommodation to a person who is destitute and is:

- Seeking asylum (section 95 of the Immigration and Asylum Act 1999)
- Appeal rights exhausted following an unsuccessful asylum claim (section 4 of the Immigration and Asylum Act 1999)
- Subject to immigration bail (has a BAIL 201 notice), such as a visa overstayer who has not claimed asylum (Schedule 10 of the Immigration Act 2016)

Home Office support can be applied for through Migrant Help. The Asylum Support Appeals Project can provide advice if a person is refused Home Office support.

As referrals to the Home Office for support can be subject to significant delays, it may be necessary to provide accommodation on a discretionary basis whilst this is being accessed and to proactively chase up the pending support application with the Home Office. The person could also be signposted to local organisations assisting asylum seekers and refugees, as they may be able to advocate for the individual.

For more information about Home Office support, see the NRPF Network website.

National Referral Mechanism support

When a victim of trafficking or modern slavery has been referred to the National Referral Mechanism (NRM), they may be able to access accommodation and financial support from the Salvation Army or a partner organisation.

Support may be available for at least 45 days after they have received a reasonable grounds decision that recognises they are a potential victim of trafficking or modern slavery. If the person is destitute, the Salvation Army may be able to provide support before the reasonable grounds decision has been made. For more information about support for survivors of modern slavery, see the Salvation Army website (www.salvationarmy.org.uk).

Support provided by friends, family or the community

When a person has lived in the UK for a significant time prior to requesting support from the local authority, it will be necessary to establish whether these arrangements remain available, and if so, whether any information and advice can be provided to the person to prevent them from becoming homeless, such as signposting to an immigration adviser.

It is also necessary to be mindful of other limitations, which prevent a person from being able to access housing in the private sector on affordability grounds or due to not having the right to rent. For example, a person with pre-settled status who is ineligible for Universal Credit or Housing Benefit may be in receipt of a disability benefit, such as a Personal Independence Payment, but this in itself would be insufficient to secure private rented accommodation or cover the person's basic living needs in addition to meeting their disability-related needs. For more information about the right to rent, see the NRPF Network website.

12.4.5 Good practice when providing accommodation on discretionary grounds

In the case of *R(Cort) v London Borough of Lambeth* [2022] EWHC 1085, the local authority was found to have acted unlawfully by failing to exercise its discretionary powers under section 138 of the Local Government Act 1972 and/or section 2B of the National Health Service Act 2006 in order to provide accommodation to a person with no recourse to public funds during the Covid-19 pandemic. The local authority acted unlawfully by failing to adopt any policy or criteria to set out how the 'Everyone In' policy was being interpreted and applied at a local level. This led to a flawed decision-making process and failure to take the 'Everyone In' policy properly into account.

The judgment provides useful guidance for local authorities, should a similar instruction or policy initiative to 'Everyone In' be implemented by government in future:

95. It seems to me that the requirements of local policy guidance / criteria for those who might make such an application following the launching of the Everyone in initiative in March 2020 did not constitute a big "ask". It was incumbent on the Defendant authority to consider its own position in the light of the national exhortation to house all the street homeless, including those of NRPF.

96. A decision could have been made to the effect that no rough sleepers could be accommodated because there were simply no resources, despite funding. It is immaterial whether such a decision might have been reviewable on other grounds, but it would have amounted to a policy response. Equally, the council might have adopted a blanket response, which would have been acceptable, that all rough sleepers regardless of immigration status would be provided with emergency accommodation. Further, if the discretion would only be exercised in "exceptional circumstances" an applicant was entitled to know what those might be. All these approaches do not require an extensive statement of policy, but merely a short indication, either in a published minute of an appropriate council meeting or committee, or a leaflet made available through housing and charitable organisations.

When shelter or other support is provided to a person with no recourse to public funds on discretionary grounds, the local authority would need to be able to demonstrate that it has made a rational and fair decision. It would be good practice to advise the individual of:

- The legal basis for providing support
- Under what circumstances this might change
- What the local authority will do to assist the person to end their homelessness
- What is required of the person receiving support to achieve this

This would need to be confirmed in writing and explained using an interpreter, where required. If such support is being requested under a national policy initiative, the local authority must refer to its established policy or criteria, in line with *R(Cort) v London Borough of Lambeth*.

When accommodation is provided to a person with no recourse to public funds, the local authority will also need to ensure a form of financial (subsistence) support is provided to cover their basic living needs. Emergency options, such as food vouchers, may not fully meet the person's needs if accommodation is likely to be provided for several weeks or months whilst their immigration matter is being resolved.

It will also be necessary to engage with individuals who are accommodated to identify and assist a person to achieve a long-term solution to their homelessness. In many cases, this will be achieved by a change of immigration status that enables the person to access public funds. For some European Economic Area nationals, access to benefits will be dependent on whether they can sustain employment and access to welfare rights advice is likely to be necessary. It will be necessary to identify what services, such as immigration advice, are available in the local area and consider how gaps can be met or capacity increased, utilising government funding where possible. For more information about pathways off support, see chapter 13.

13. Pathways off support

This chapter provides information to help identify an appropriate pathway out of homelessness and assist the person to achieve this when they have been provided with accommodation and financial support.

When accommodation and financial support is provided under the Care Act 2014, or other statutory power, it can take a long time to resolve the person's situation of homelessness. Adults with care needs receive support for an average 2.7 years and 60% exit support following a grant of leave to remain. Therefore, in order to promote the person's well-being and reduce costs for the local authority, it will be necessary to work with the person to achieve a sustainable outcome to their homelessness. Local authorities that do not have specialist workers or a no recourse to public funds team will need to be clear about who has responsibility for undertaking assessments, monitoring caseloads, managing the accommodation and supporting people to resolve their immigration issues with the Home Office. These actions are necessary regardless of the legal basis or service under which support is being provided.

13.1 Immigration advice

The provision of immigration advice and services is regulated. It is a criminal offence for a person to provide immigration advice and services to an individual when they are not permitted to do so.

13.1.1 Who can provide immigration advice?

The following people can provide immigration advice:

- An immigration adviser who is registered with the Office of the Immigration Services Commissioner (OISC) or is exempt from registration
- A solicitor who is registered with the Solicitors Regulation Authority (England and Wales), Law Society of Scotland or Law Society of Northern Ireland
- A barrister who is regulated by the Bar Standards Board (England and Wales), Faculty of Advocates (Scotland), or the Bar Council of Northern Ireland

When an adviser is registered with the OISC, they will only be permitted to provide advice at the competency level they are registered at. For example, only a level three adviser can represent a person in their immigration appeal at an Immigration and Asylum Tribunal. For full details about what type of work is permitted at each level, see the OISC, guidance on competence.

It will be necessary to establish a list of local immigration advisers that can be provided to a person who is receiving support. As legal aid is not available for most types of non-asylum immigration matters, this is likely to need to include any free advice providers, such as a law centre or voluntary and community sector service. Local authorities are increasingly funding legal advice services to fill gaps in legal aid provision because access to good quality legal advice is essential to ensure that a person makes the right application and can effectively present their case to the Home Office. Equally, local authorities will find it difficult to implement Schedule 3 of the Nationality, Immigration and Asylum Act 2002 without people first seeking immigration advice to establish whether they have a basis to apply to remain in

the UK. See the NRPF Network website for information about how to find an immigration adviser.

13.1.2 What can a person do if they are not an OISC adviser?

Providing general information or signposting a person to a legal representative is not considered to be regulated immigration advice.

Anyone working with people who have no recourse to public funds will need to be able to identify when an individual would need to be signposted to get legal advice from an immigration adviser. Therefore, it is useful to gain a basic awareness of possible immigration options that might apply. If a person is able to overcome immigration-based exclusions through a change in their immigration status, this will lead to better well-being outcomes, such as increased stability in their lives, and the ability to access work and services without restrictions.

When a legal representative is assisting a person to prepare an application, it may be necessary to help them to gather any documents necessary to support the application, as advised by their legal representative. If the person is receiving support from a local authority, their social worker or caseworker may need to provide a letter to confirm details of the local authority's involvement.

Preparing good quality representations to the Home Office can take several months. However, it is likely to be advantageous for the local authority to allow for the necessary preparation time to give the immigration adviser and the individual every opportunity to present their case effectively, which will increase the chances of the Home Office deciding the case correctly. When poor applications are submitted and refused, the person is likely to experience a lengthy wait for an appeal hearing or may need to start the application process again.

A person should be advised to inform their legal representative if they are receiving local authority support and let them know if their information has been shared with the Home Office through NRPF Connect, where relevant. This will enable the legal representative to advise their client appropriately and update any pending applications where this is necessary. The legal representative may also find it helpful to ask the local authority to chase up the Home Office for updates about a pending application, which can be done through NRPF Connect.

13.1.3 Working with people who lack mental capacity in relation to their immigration matters

It may be particularly challenging for a local authority to resolve dependency on social services' support when a person lacks the mental capacity to make decisions about their immigration matters. For example, if a person did qualify for care under the Care Act 2014 but they were also 'in breach of immigration law' and caught by the exclusion to social services' support, a lack of mental capacity could be identified as a practical barrier to leaving the UK in the Human Rights Assessment. When a person being cared for is trapped in a position of not having immigration status addressing this with the support of an immigration adviser is in their best interests and must be actively considered.

In their [supporting migrants lacking mental capacity in relation to immigration matters guidance](#), Migrant Organise provides the framework on how to assess mental capacity in relation to immigration matters. The guidance then sets out the steps statutory services can take if a person does lack mental capacity to make immigration decisions.

Both the Care Act 2014 and aftercare responsibilities under Section 117 of the Mental Health Act 1987 allow considerable scope for local authorities to progress and resolve people's immigration matters. The time and effort required to get the process right will be of longer-term benefit to the person receiving care and will help reduce adult social care expenditure once a person's right to stay in the UK is formally recognised.

When applications are made with the help of qualified immigration advisers for people with extreme vulnerabilities, including a lack of mental capacity, the Home Office will work to ensure that these matters are urgently addressed through decision-making teams.

13.2 Immigration pathways

There are various different immigration routes that might enable a person to obtain a change in their immigration status that allows them to access public funds (benefits and housing assistance). Examples of such routes include:

- Change of conditions application to request that the NRPF condition is lifted
- Destitution Domestic Violence Concession
- EU Settlement Scheme
- Windrush Scheme

The person's current immigration status, personal circumstances, and/or residence history will usually determine what application they can make. A person would need to be signposted to an immigration adviser to explore all of their options and for assistance with making an application.

If a person states that they believe they would be at risk of persecution or ill treatment on return to their country of origin, they would need to be signposted to an immigration adviser to find out whether they can claim asylum. Legal aid is available for asylum cases.

If a person expresses a wish to return to their country of origin, they can be signposted to information about the Home Office voluntary returns service or the local authority can fund and facilitate a return. It is always advisable to provide the person with an opportunity to access immigration advice so that they are clear about the implications of return on their ability to return to the UK in the future.

For more information about different immigration routes and voluntary return, see the NRPF Network website.

13.3 Access to benefits for EEA nationals

European Economic Area (EEA) nationals entering the UK are subject to the same Immigration Rules as other non-UK citizens. However, some EEA nationals will have residence rights that are documented through the EU Settlement Scheme and will enjoy different entitlements to those that have entered under other Immigration Rules, such as visitors, students, and workers. It will therefore be necessary to establish an EEA national's

immigration status in order to establish whether they will qualify for benefits, and whether they will need to meet a right to reside test in order to do so.

A person will need to meet a right to reside test in order to qualify for means tested benefits and homelessness assistance under Part VII of the Housing Act 1996 if they have:

- Pre-settled status granted under the EU Settlement Scheme
- A pending EU Settlement Scheme application

A person with pre-settled status will usually need to be working or self-employed in order to qualify for benefits. Therefore, a person who is 'work-ready' is likely to need signposting to employment organisations to help them find employment. When a person is clearly unable to work due to ill health or having high level care needs, they may not be able to access benefits until they obtain settled status under the EU Settlement Scheme. A person can apply for settled status after they have completed five years' residence in the UK. They do not need to wait until their pre-settled status is about to expire to apply.

The right to reside test can be complex and there are several grounds on which a person can meet it. When an EEA national is refused benefits, they should always be referred to a welfare rights adviser to find out whether they can challenge this decision.

For more information about benefit entitlement for EEA nationals and how to find a benefits adviser, see the NRPF Network website.

13.4 Working with the Home Office

The Home Office is committed to working with local authorities to prioritise decision-making when households are being financially supported at a cost to the taxpayer.

NRPF Connect is the national system to record local authority caseloads, improve decision-making, and inform policy developments. NRPF Connect is operated in partnership between the NRPF Network and the Home Office and currently used by 80 local authorities with social care responsibilities.

Local authorities can use of the NRPF Connect database to support casework practice to obtain immigration status information, gain updates about the progress of outstanding applications, and ensure financially supported cases are being prioritised by the Home Office. Local authorities using NRPF Connect need to ensure data is up-to-date and that information received from the Home Office is acted upon in the best interests of the individual receiving support, including identifying when it is necessary to assist the person to access immigration advice.

A significant proportion of adults with care needs have been supported by their local authority for over three years. Some of these people will be in a position where they have not been able to make a successful application under the Immigration Rules, yet the local authority's human rights assessment has identified that the person be expected to return to their country of origin due to a practical obstacle, such as ill health, high-level care needs, or mental capacity issues. Such cases need to be raised with the Home Office and flagged to the NRPF Network.

By recording caseloads on NRPF Connect, local authorities will contribute to the national data set that is used as evidence to highlight the challenges people face achieving a sustainable outcome to their homelessness and an exit from local authority support. This data informs the NRPF Network's policy and funding recommendations for government, as well as operational and policy recommendations for the Home Office. For more information about NRPF Connect see the NRPF Network website.

References

Case law

- R (Limbuela) v Secretary of State for the Home Department [2005] UKHL 66
- SO v London Borough of Barking and Dagenham [2010] EWCA Civ 1101
- R (Cornwall Council) v Secretary of State [2015] UKSC 46
- R(SG) v London Borough of Haringey [2015] EWHC 2579
- R(GS) v London Borough of Camden [2016] EWHC 1762
- R (SG) v London Borough of Haringey & Ors [2017] EWCA Civ 322
- AR v London Borough of Hammersmith and Fulham [2018] EWHC 3453
- R(Aburas) v London Borough of Southwark [2019] EWHC 2754
- R(Antoniak) v Westminster City Council [2019] EWHC 3465
- Ncube v Brighton and Hove City Council [2021] EWHC 578
- R (Worcestershire CC) v SSHSC [2021] EWCA Civ 1957
- R(Cort) v London Borough of Lambeth (2022) EWHC 1085

All case law can be accessed at: bailii.org or caselaw.nationalarchives.gov.uk.

Legislation

Primary legislation

- The Local Government Act 1972, s138
- The Children Act 1989, s17
- The Housing Act 1996, Part VII
- The Human Rights Act 1998
- The Nationality, Immigration and Asylum Act 2002, s54 and Schedule 3
- The National Health Services Act 2006, s2B
- The Localism Act 2011, s1
- The Care Act 2014, Part 1
- The Health and Care Act 2002

Secondary legislation

- The Care and Support (Assessment) Regulations 2014
- The Care and Support (Continuity of Care) Regulations 2014
- The Care and Support (Direct Payments) Regulations 2014
- The Care and Support (Disputes Between Local Authorities) Regulations 2014
- The Care Act and the Care and Support (Eligibility Criteria) Regulations 2015
- The Immigration Rules HC395, available at:
<https://www.gov.uk/guidance/immigration-rules>.

All legislation is available at: <https://www.legislation.gov.uk/>.

Guidance

COSLA (2019) Migrant's rights and entitlements at <https://www.migrationscotland.org.uk/>

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Department for Levelling Up, Housing and Communities (11 February 2022) the Rough Sleeping Accommodation Programme 2021-24 at <https://www.gov.uk/government/publications/rough-sleeping-accommodation-programme-2021-24>

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Department of Health (October 2014) Response to the consultation on draft regulations and guidance for implementation of Part 1 of the Care Act 2014 at <https://www.gov.uk/government/consultations/updating-our-care-and-support-system-draft-regulations-and-guidance>

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Department of Health and Social Care (16 June 2022) Statutory guidance: DHSC's position on the determination of ordinary residence disputes pending the outcome of the Worcestershire case at <https://www.gov.uk/government/publications/care-act-statutory-guidance/dhscs-position-on-the-determination-of-ordinary-residence-disputes-pending-the-outcome-of-r-worcestershire-county-council-v-secretary-of-state-for>

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Department of Health and Social Care (1 July 2022) Hospital Discharge and Community Support Guidance at <https://www.gov.uk/government/publications/hospital-discharge-and-community-support-guidance>

Department of Health and Social Care (14 July 2022) Guidance on implementing the overseas visitors charging regulations at

<https://www.gov.uk/government/publications/overseas-nhs-visitors-implementing-the-charging-regulations>

Home Office (3 August 2018) Asylum seekers with care needs at <https://www.gov.uk/government/publications/asylum-seekers-with-care-needs-process>

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Glossary

Appeal rights exhausted (ARE)	A person will become 'appeal rights-exhausted' when their asylum or immigration claim and any subsequent appeals have been unsuccessful, the time to lodge an appeal has passed, or they have no further right to appeal.
Asylum seeker	A person who has made a claim to the UK government for protection (asylum) under the United Nations Refugee Convention 1951 and is waiting to receive a decision from the Home Office on their application or from the Court in relation to an appeal.
Country of origin	Usually the person's country of nationality. If this is unclear or unknown then the local authority would need to find out from the Home Office which country the person may be removed to or whether the person is stateless.
EEA national	A person who is a national of a European Economic Area (EEA) country or Switzerland. EEA countries: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lichtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovenia, Spain, Slovakia and Sweden.
Home Office	The government department that is responsible for maintaining immigration control, including: <ul style="list-style-type: none">• UK Visas and Immigration (application casework)• Border Force (border control)• Immigration Enforcement (enforcement within the UK including the Intervention and Sanctions Directorate which undertakes immigration status checking for local authorities)
Humanitarian Protection	A person who has been recognised as having a real risk of serious harm or well-founded fear of persecution in their country of origin, but not for any reason set out under the UN Refugee Convention 1951. They will be granted five years limited leave to remain, may work and claim public funds, and can apply for indefinite leave to remain after five years.
Illegal entrant	A person who has entered the UK without the correct immigration permission, has used deception to gain entry, has not passed through immigration control, or who re-enters the UK before their deportation order is revoked.
Immigration Rules	Immigration legislation that sets out: <ul style="list-style-type: none">• the categories under which people can apply for leave to enter or remain in the UK;• the requirements which need to be met to be granted leave;• the length of leave that is granted; and• any conditions attached to the leave, such as 'no recourse to public funds'.
Indefinite leave to enter (ILE)	Immigration permission with no time limit on the length of stay in the UK. There are no conditions attached to this type of leave so a person may undertake employment and can access public funds (unless they were granted as an adult dependant relative and have lived in the UK for less than five years).
Indefinite leave to remain (ILR)	
Leave to enter	Immigration permission issued by an Immigration Officer when a non-EEA national enters the UK. Most people are required to apply

	for prior entry clearance at a visa application centre abroad, which will be provided as a vignette in the person's passport.
Leave to remain	Immigration permission issued by the Home Office, which is applied from within the UK, usually by completing an application online, by post or in person.
Leave to remain outside of the rules	Leave to remain granted outside of the Immigration Rules on the basis of a person's family or private life in the UK.
Limited leave to enter	Immigration permission issued for a time limited period. Conditions may include restrictions on employment and access to public funds.
Limited leave to remain	
Non-EEA national	A person who is a national of a country that is outside of the European Economic Area (EEA) and Switzerland.
No recourse to public funds	An immigration condition that prevents a person from being able to claim most benefits, homelessness assistance and a local authority allocation of social housing.
Pre-settled status	Five years limited leave to remain granted under the EU Settlement Scheme to an EEA national or a non-EEA family member.
Primary carer	When a person, who is the parent, grandparent, or legal guardian, either has primary responsibility for the child's care or shares this responsibility equally with another person.
Refugee	A person who has been recognised as having a well-founded fear of persecution in their country of origin for reasons of race, religion, nationality, membership of a particular social group, or political opinion under the UN Refugee Convention 1951. They will be granted five years limited leave to remain, may work and claim public funds, and can apply for indefinite leave to remain after five years.
Section 3C leave	3C leave preserves a person's lawful status and entitlements whilst their application for leave to remain is pending. A person will have section 3C leave when their leave to enter or remain has expired and they have a pending application for leave to remain that was submitted prior to their previous leave expiring. 3C leave continues whilst any subsequent appeal or administrative review is pending.
Settled status	Indefinite leave to remain granted under the EU Settlement Scheme to an EEA national or a non-EEA family member.
Visa overstayer	A person who had leave to enter or remain in the UK for a limited period and has no lawful status because they: <ul style="list-style-type: none"> • did not make an application to extend their leave before their previous leave expired, or • made an application which was refused after their previous leave expired.

Endorsements

This guidance has been endorsed by the [Local Government Association](#) (LGA) and [Association of Directors of Adult Social Services](#) (ADASS).

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Disclaimer

This practice guidance is for information purposes only and provides general guidance about the issues a local authority practitioner may need to consider when assessing need and providing accommodation and financial support to adults with no recourse to public funds. The guidance is not intended to constitute advice in relation to any specific case. Every attempt has been made to present up to date and accurate information and this guidance will be updated periodically. However, practitioners are advised to check the current legal position and seek advice from their local authority legal teams on individual cases.

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