

# Supporting people with no recourse to public funds during the Covid-19 pandemic

## Guidance for local authorities

The UK is currently facing a public health emergency due to the Covid-19 pandemic. Government regulations and guidance on self-isolation, social distancing, and the shielding of vulnerable individuals applies to everyone living in England, regardless of their nationality, main country of residence, or immigration status.

Local authorities have led responses to protect residents and have accommodated people with no recourse to public funds who would have otherwise been unable to comply with shielding, self-isolation, or social distancing requirements.

However, people who are subject to the 'no recourse to public funds' (NRPF) condition continue to be excluded from most benefits and housing assistance, despite multiple calls for this restriction to be lifted during the pandemic to enable everyone in need to access basic support. European Economic Area (EEA) nationals with pre-settled status or who have not yet obtained leave under the EU Settlement Scheme may also be denied access to benefits if they are unable to work.

This factsheet provides information for local authorities in England to help establish a person's support options when they have no recourse to public funds and are destitute or at risk of homelessness. It also provides information for social services to consider when providing accommodation and financial support to families or adults with care needs during the pandemic and is intended to be read in conjunction with our [practice guidance](#).

### Contents:

- Section 1. Covid-19 information
- Section 2. Testing, treatment, and vaccination
- Section 3. Homelessness response
- Section 4. Social services' support (accommodation & financial support)
- Section 5. Home Office asylum support
- Section 6. Emergency support for residents

## 1. Covid-19 information

Government [information on Covid-19](#) and [information for local authorities](#) should be referred to in the first instance for information about the current restrictions and service delivering requirements. Different rules apply in [Scotland](#), [Wales](#), and [Northern Ireland](#).

The Local Government Association (LGA) also provides useful [information and guidance for councils](#) in England.

Local authorities in Scotland will need to refer to the COSLA framework: [Covid-19 guidance on migrants' rights and entitlements](#).

## 2. Testing, treatment, and vaccination

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The [NHS Covid-19 migrant health guide](#) confirms that the following services are exempt from NHS charging and can be provided free of charge to anyone, regardless of their immigration status:

- Diagnosis and testing of Covid-19 (even if the test result is negative)
- Treatment of Covid-19
- Vaccination against Covid-19

The NHS guidance also states that ‘no immigration checks are needed for overseas visitors if they are only tested, treated or vaccinated for Covid-19’.

A person will need to be registered with a GP in order to receive an invitation to be vaccinated, so local authorities may need to assist people they are supporting to register. See the [NHS Migrant Health Guide](#) for information about what to do if a GP surgery refuses to register a patient. The local Clinical Commissioning Group may be able to provide information about any outreach programmes that being undertaken to engage with people who have been unable to register with a GP or who are concerned about doing so due to their immigration situation.

See also the translated information produced by [Doctors of the World](#).

## 3. Emergency accommodation for rough sleepers (‘Everyone In’)

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Following the government [instruction in March 2020 to bring ‘everyone in’](#), including those who have no recourse to public funds, local authorities have accommodated [37,430 people](#) who were rough sleeping or at risk of rough sleeping.

‘Everyone In’ has resulted in accommodation being provided to a significant number of people who are ineligible for assistance under Part VII of the Housing Act 1996 and who do not qualify for support from social services. Where complex immigration matters need to be addressed, and when certain groups with leave to remain continue to be excluded from accessing benefits, such as EEA nationals with pre-settled status who are unable to work, many people who have been provided with emergency accommodation face difficulties moving on to longer-term housing, leaving local authorities with ongoing support costs.

As the economic impacts of the pandemic are likely to put more people at risk of homelessness, local authorities continue to play a key role in protecting lives and reducing public health risks by providing accommodation to those at risk of rough sleeping, and must consider what assistance can be provided to people who are ineligible under Part VII of the Housing Act 1996.

### **What powers and duties enable accommodation to be provided to people with no recourse to public funds?**

It is well established that social services will have a duty to provide accommodation to destitute families and adults with care needs who have no recourse to public funds under section 17 of the Children Act 1989 and the Care Act 2014, respectively. For more information about when these duties apply, see section 4.

However, the Government has not specified which legal powers may be relied on to provide accommodation to a rough sleeper who is ineligible for assistance under Part VII of the Housing Act 1996 when they do not qualify for support from social services. This has been unclear since two High Court rulings ([AR v Hammersmith and Fulham Council](#) & [Aburas v Southwark Council](#)) found that section 1 of the Localism Act 2011 - the general power of competence - could not be used for the purpose of accommodating a person who is ineligible under Part VII of the Housing Act 1996.

In the case of [Ncube v Brighton and Hove City Council](#), the High Court has now provided much needed clarity about when the law enables councils to accommodate people who are ineligible under Part VII during the pandemic. The Judge found that in order to save lives by alleviating the effect of the Covid-19 pandemic through the 'Everyone In' scheme, or a successor initiative, a local authority can rely upon powers under section 138 of the Local Government Act 1972 and section 2B of the National Health Service Act 2006 to accommodate a person with no recourse to public funds. The Judge also found that the general provision of section 1 of the Localism Act 2011 cannot be used where there is no other statutory basis to provide accommodation.

### **Background to the case**

The Judicial Review was brought by Mr Ncube, an Appeal Rights Exhausted (ARE) asylum seeker, following the council's refusal to provide him with accommodation on the basis that it had no legal power to do so and that he was able to access section 4 asylum support from the Home Office. Mr Ncube had initially been advised by Migrant Help that he did not qualify for section 4 support and had not applied for this at the time he approached his council for assistance in September 2020, when Brighton was subject to tier one restrictions. Mr Ncube was eventually provided with section 4 accommodation, following a reconsideration of a decision by the Asylum Support Tribunal. His asylum support claim was initially refused by the Home Office and his first appeal to the Tribunal had been dismissed. As Mr Ncube was accommodated by the Home Office in another area by the time of the hearing, the Judge limited his consideration to the question of whether the Council did in fact have powers it could have relied upon to accommodate Mr Ncube when he had been homeless.

### **Section 138 of the Local Government Act 1972**

Section 138 provides councils with powers to take action to avert, alleviate, or eradicate the effects or potential effects of an emergency or disaster that involves danger to life. The Judge found that this power 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.

The Judge found that the pandemic has given rise to the use of these emergency powers during periods of national lockdown ‘when the restrictions have been particularly intense and when even a failed asylum seeker would have been unable to travel’, and that it still gave rise to an emergency during the period when Brighton was subject to tier one restrictions that ‘remained very significant’. (Paragraphs 60-61)

Although no further guidance is provided with regards to how these powers are to be applied in individual cases, the Judge does find that:

‘..the discretion to provide temporary accommodation is not a duty which it owes to a street homeless person but is simply a part of its powers in a particular set of circumstances. If the person has other avenues of accommodation such that this emergency support is not required, then that is likely to be relevant to the exercise of the discretion’. (Paragraph 64)

### **Section 2B of the National Health Service Act 2006**

Section 2B of the National Health Service Act 2006 requires a local authority to take steps to improve the health of the people in its area. The Judge found that this can include the provision of emergency accommodation to meet a public health need through ‘Everyone In’, or any future initiative intended to save lives. The local authority would need to be clear that it is seeking to meet a public health need by providing accommodation, and ‘might rationally consider that certain steps were not appropriate e.g. since it was for central government or because its limited resources were better dedicated elsewhere’. (Paragraph 79)

### **What does this mean in practice?**

Whilst Covid-19 remains a public health emergency, a council must consider using its powers under section 138 of the Local Government Act 1972 and section 2B of the National Health Service Act 2006 to provide accommodation when a person who is homeless is assessed as being ineligible for Part VII assistance. Accommodation cannot be refused on the basis that there are no legal grounds for supporting a person who has no recourse to public funds.

When making a decision to provide support, the Council is entitled to consider what other accommodation options the person may have, such as Home Office asylum support. However, if alternative support has been identified but cannot be immediately accessed, accommodation can be provided by the Council as an interim measure using these powers.

### **What doesn't the judgment tell us?**

The judgment does not address a council's ongoing responsibilities to accommodate people with no recourse to public funds when the pandemic no longer gives rise to a public health emergency - a question that has been raised by many councils due to the difficulties achieving an expedient transfer to longer-term accommodation when people remain excluded from benefits- and the Judge does not provide guidance on how and when it will be decided when the emergency powers can no longer be used. However, it is clear that the powers can be engaged whilst an area is subject to lesser restrictions than those that apply during a national lockdown, and that any local policy decisions will need to be public health led.

## **What additional assistance needs to be provided to a person who has been accommodated?**

It is good practice to be clear from the outset with an individual receiving support about the legal basis on which support is provided, under what circumstances this might change, what the local authority will do to assist the person to end their homelessness, and what is required of them to achieve this. This would need to be confirmed in writing and explained using an interpreter, as required.

When accommodation is provided to a person with no recourse to public funds, the local authority will also need to ensure a form of 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 to be provided for several weeks or months.

Staff will also need to engage with individuals who are accommodated to identify and assist a person to achieve a sustainable solution to their homelessness. In the majority of cases, this will be achieved by a change of immigration status that enables the person to access employment and/or benefits. For example, making an application under the EU Settlement Scheme or a change of conditions application to remove an NRP condition.

As legal aid is not available for the majority of immigration cases, it will be necessary to identify what advice is available in the local area and whether any MHCLG funding can be used to meet gaps or increase capacity.

Support with accessing employment may be necessary for EEA nationals with pre-settled status and people with leave to remain that confers permission to work.

People who are seeking asylum or are Appeal Rights Exhausted (ARE) asylum seekers will also need to be identified and assisted to transfer to Home Office support, where appropriate (see section 5).

## **4. Social services' support (accommodation & financial support)**

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### **When can accommodation and financial support be provided to adults?**

Section 18 of the Care [Act 2014](#) requires a local authority to meet an adult's eligible care and support needs that have arisen due to a disability, illness, or mental health condition. Accommodation can be provided where this is necessary to enable the effective delivery of the care required. Section 19(1) provides a power to meet non-eligible care and support needs and section 19(3) provides a power to meet urgent needs whilst an assessment is undertaken. Therefore accommodation can be provided pending the outcome of an assessment and in some instances where a person has care needs that do not meet the eligibility criteria. Social services are not required to meet care and support needs that have arisen solely due to destitution.

Provisions in the Coronavirus [Act 2020](#) allow for Care Act 'easements' to be implemented by a local authority when certain circumstances apply. If applied, the local authority will have a power to meet needs and would only have a duty to meet care and support needs when failure to do so would breach the person's human rights. The easements may only be applied when a local authority is unable to meet acute needs due to a depleted workforce or

significant service demand. A decision to apply the easements can only be taken in line with government [guidance](#). Any council that applies the easements will be listed on the [Care Quality Commission's website](#). Currently no local authorities are applying the easements.

### **When can accommodation and financial support be provided to families?**

Section 17 of the Children [Act 1989](#) will be engaged to provide accommodation and/ or financial support to a family where the child is assessed as being in need because of their parent's lack of income or resources to be able to meet their living and/or housing needs.

The local authority will need to determine what interventions are needed to protect the welfare of children, to reduce public health risks, and to comply with government instructions to accommodate people who are at risk of rough sleeping, including those who have no recourse to public funds. This may involve considering:

- Whether interim support needs to be provided whilst a child in need assessment is undertaken.
- To what extent investigations into the parent's financial circumstances need to be undertaken in light of the urgent need to protect children and reduce public health risks by preventing homelessness during the pandemic.
- What information about entitlements can be provided to families, such as Statutory Sick Pay or other government measures to assist people who lose employment, funded early years or child care, and free school meals.
- Whether finance support (subsistence) may need to be provided to families who are able to stay in their accommodation but have a reduced income due to the economic consequences of the pandemic.
- Whether children can be provided with free laptops in line with the government guidance about [getting laptops and tablets for children who cannot attend school due to coronavirus \(COVID-19\)](#).
- Whether changes need to be made to subsistence support (see 'subsistence payments' below).

### **How does the pandemic affect the application of the exclusion to social services' support?**

Schedule 3 of the Nationality, Immigration and Asylum [Act 2002](#) places a bar on a local authority providing support under the Care Act 2014 or section 17 of the Children Act 1989 to a person who is 'in breach of immigration laws', unless this is necessary to prevent a breach of human rights. When the exclusion applies, the local authority will undertake a human rights assessment to determine whether the person is able to return to their country of origin to avoid a human rights breach, which may arise from their situation of destitution in the UK. This will involve identifying whether there is a legal barrier or practical obstacle preventing return. For more details, see our information about [when the exclusion applies](#).

Many countries have closed their borders or introduced entry restrictions, and several airlines have stopped operating or significantly reduced services, so travel to the majority of countries is going to be extremely difficult or impossible to arrange. These measures are subject to frequent change, often without notice. In England, which is currently subject to a third national lockdown, [government guidance](#) prohibits international travel unless a person

has a legally permitted reason to leave home, and confirms that foreign nationals are subject to the 'Stay at Home' regulations and should not travel abroad unless it is permitted. Additionally, a person who contracts Covid-19, or who is required to self-isolate or shield, cannot be expected to travel for public health reasons. Whilst these barriers to return apply, local authorities will be unable to refuse or withdraw support when a person is 'in breach of immigration laws' and is eligible for assistance under section 17 of the Children Act 1989 or the Care Act 2014.

The Schedule 3 exclusion also applies to support or assistance provided under section 1 of the Localism Act 2011 but does not apply to section 138 of the Local Government Act 1972 and the duty under s.2B National Health Service Act 2006. Further information about the use of these powers to provide accommodation to rough sleepers is set out in section 3.

### **Do any changes need to be made to subsistence payments?**

Administering subsistence payments will need to be done by avoiding methods involving face to face contact and cash transactions, where possible, for example, by:

- Issuing pre-paid cards and pre-ordering these to have ready
- Paying funds directly into a bank account, if the person has one
- Providing payments to cover longer periods of time than usual

It may be necessary to review the amounts regularly paid to reflect the impacts of having to stay at home and to help people to maintain their physical and mental wellbeing during the pandemic.

For example, payments may need to take account of the following:

- Children who are not attending school may need access to books, writing and drawing materials.
- Children may no longer be receiving free school meals (although they should qualify for vouchers or alternative schemes that are operating whilst schools are closed or children are self-isolating).
- Increased use of more expensive shops to avoid travel outside the local area or due to shortages of key items in larger stores.
- Increased use of mobile phones and the internet for communication, education, and social interaction.
- Increased use of utilities whilst people follow 'stay at home' regulations and during winter months, where these are not covered directly by arrangement with the accommodation provider.
- The recent increase to [asylum support rates](#), where these rates are benchmarked in a subsistence policy.
- The £20 per week increase paid to [Universal Credit](#) and [Working Tax Credit](#) claimants, where these rates are benchmarked in a subsistence policy.

### **What is the position for people who can transfer to alternative accommodation?**

When social services are no longer under a duty to provide temporary accommodation to a household, such as following a grant of leave remain with recourse to public funds enabling a family to transfer to mainstream benefits and housing services, any local policy on evictions will need to be followed.

Where temporary accommodation is withdrawn, steps will need to be taken to ensure a safe transfer of accommodation. See the current government guidance about [home moving during the coronavirus \(Covid-19\) outbreak](#).

The UK Government has banned the enforcement of evictions by bailiffs until after 31 May 2021, although in some cases an eviction can be carried out before then and the courts are continuing to hear possession proceedings. See the government [guidance for landlords and tenants](#).

## 5. Home Office asylum support

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A person who has claimed asylum or is appeal rights exhausted (ARE) following an asylum application may be eligible to apply for Home Office asylum support. In [a factsheet about asylum accommodation](#), the Home Office confirms that ‘those asylum seekers who would otherwise be destitute are supported by the Home Office on application, rather than local authorities’.

In the case of *Ncube v Brighton and Hove City Council*, the Judge found that when a homeless Appeal Rights Exhausted (ARE) asylum seeker meets the criteria for section 4 support, accommodation should be provided by the Home Office. However, whilst the pandemic gives rise to a public health emergency, accommodation may need to be provided by the Council as an interim measure if Home Office support cannot be immediately accessed. See section 3 for more information about emergency accommodation for rough sleepers.

There may be some instances when asylum seeking adults with care needs who qualify for support under the Care Act 2014 or families supported under section 17 of the Children Act 1989 will need to be supported by the local authority, rather than the Home Office. See our [practice guidance](#) for more information.

Asylum support can be accessed through [Migrant Help](#). The [Asylum Support Appeals Project](#) can provide advice when a person has been refused support and have also produced a factsheet on [Covid-19 and asylum support](#).

### What is the current position on support cessations?

When an asylum seeker is granted a form of status, they will be issued with a 28 day move-on letter and will need to access the local authority’s homelessness service.

Due to a court injunction, the Home Office cannot current evict people who are appeal rights exhausted (ARE) or who otherwise no longer qualify for asylum support (unless they do not qualify due to no longer being destitute). However, the Home Office may still terminate a person’s support. The position regarding asylum support evictions is subject to change. See the Refugee Council’s [information about the current situation and other changes to the asylum and immigration process due to Covid-19](#).

## 6. Emergency support for residents

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Due to the far-reaching economic consequences of the pandemic, there is a clear need for local authorities to be able to meet the basic welfare needs of all residents, regardless of their immigration status.

Local authorities have received government funding to administer emergency assistance, including the Test and Trace Support Payments Scheme and COVID Winter Grants

Scheme, and may also be considering what longer-term provision can be made to assist residents in need by utilising internal funding streams. Councils have been using their local welfare assistance schemes to administer emergency support, such as food vouchers and utility top-ups, and, in some cases, Test and Trace Support Payments.

### **Can emergency support be provided to residents with no recourse to public funds?**

The Government has left it at the discretion of local authorities to decide what emergency support may be provided to residents with no recourse to public funds and has not added Test and Trace Support Payments or assistance funded by the COVID Winter Grants to the [list of public funds](#) that a person who is subject to the 'no recourse to public funds' (NRPF) condition cannot access.

Local authorities should note that a person who has leave to remain with NRPF could be at risk of breaching their conditions by receiving 'a discretionary payment made by a local authority under section 1 of the Localism Act 2011', which is a public fund. This was added to the list of public funds when local welfare assistance schemes were established by councils to administer emergency support, such as community care grants and crisis loans, to people in receipt of benefits, following the abolition of the discretionary Social Fund.

Emergency support, other than 'a discretionary payment under section 1 of the Localism Act 2011', may therefore be provided to residents with no recourse to public funds, where local qualifying criteria are met. When such support is administered using the mechanism of a local welfare assistance scheme, it is highly advisable that the local authority clearly records details of this support on its systems in order to protect recipients who have leave to remain with NRPF from being incorrectly deemed to be in breach of their immigration conditions, should this ever be queried by the Home Office in relation to a future immigration claim.

### **Who can receive a Test and Trace Support Payment?**

A payment of £500 can be made to a person who is contacted by the NHS (Test and Trace or the app) and needs to self-isolate but cannot work from home. See the [government guidance](#) for the full eligibility criteria.

A person who has no recourse to public funds will not meet the main qualifying criteria as the payment is restricted to people who are currently receiving certain benefits, which are all classed as 'public funds' for immigration purposes.

Local authorities can also make a discretionary payment to individuals who are not receiving one of the qualifying benefits when they are on a low income and will face financial hardship as a result of not being able to work while they are self-isolating. It is open to local authorities to impose additional criteria. The [test and trace support payments implementation guide for local authorities](#) does not prohibit a discretionary payment from being made to a person who has no recourse to public funds when the qualifying criteria are met. In response to a parliamentary written question about whether people with no recourse to public funds are eligible to apply for the Test and Trace Support Payment, a [government minister states](#):

Where an individual is not in receipt of one of the qualifying benefits but meets the other eligibility criteria and may face financial hardship if they have to self-isolate, local authorities can make a £500 discretionary payment. Depending on their

individual circumstances, people who have no recourse to public funds may be eligible for a discretionary payment.

### **Who can receive support through the COVID Winter grant scheme?**

The COVID Winter grant scheme can be used by local authorities to support vulnerable individuals and families who are most in need across England with the cost of food, energy (heating, cooking, lighting), water bills (including sewerage) and other essentials. The fund can be used until the end of March 2021 and eligibility is not restricted to people who are receiving benefits.

With regards to providing grants to people with no recourse to public funds, the [government guidance](#) states:

102. Authorities can provide a basic safety net support to an individual, regardless of their immigration status, if there is a genuine care need that does not arise solely from destitution, for example if:

- there are community care needs
- they have serious health problems
- there is a risk to a child's wellbeing

103. The rules around immigration status have not changed. Authorities must use their judgement to decide what legal powers and funding can be used to support individuals who are ineligible for public funds or statutory housing assistance.