



Secretary of State for the Home Department
The Rt Hon Priti Patel MP
2 Marsham Street
London
SW1P 4DF

9 April 2020

Dear Home Secretary,

Immediate suspension of No Recourse to Public Funds

Due to the seriousness of the COVID-19 pandemic, we request that you immediately suspend the No Recourse to Public Funds ('NRPF') system in its entirety for the duration of this public health emergency.

We work with and represent the interests of both: (1) migrants with Limited Leave to Remain ('LLTR') subject to NRPF conditions; and (2) undocumented migrants. We are deeply concerned about the welfare of our service users and the wider public health implications of continuing to restrict their financial support from the State during this crisis.

On 26th March 2020, The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 came into force.¹ The regulations state that during the emergency period, no person may leave the place where they are living without reasonable excuse, unless they are homeless. A reasonable excuse includes the need:

1. To obtain basic necessities (food, medical supplies and items for essential upkeep, maintenance and functioning of the household and/or money) for yourself, others in the same household (including pets) or for vulnerable persons
2. To take exercise either alone or with other members of your household
3. To seek medical assistance including accessing dental services, opticians, audiology services, chiropody, chiropractors, osteopaths and other medical or health services, including services relating to mental health.
4. Provide care and assistance to vulnerable person and/or emergency assistance
5. To donate blood
6. To travel for the purposes of work or to provide voluntary or charitable services where it is not reasonably possible for that person to work or to provide those services from the place where they are living.
7. To attend a funeral

¹ <https://www.legislation.gov.uk/ukxi/2020/350/contents/made>

8. To fulfil a legal obligation including attending court, satisfying bail conditions or participate in legal proceedings
9. To access critical public services including childcare or educational facilities (where still available to the relevant child), social services, DWP, victims of crime services
10. To enable contact between children and separated parents to continue
11. For a minister of religion or worship leader to go to their place of worship
12. To move house where necessary
13. To avoid injury or escape risk of harm

We consider that the NRPf system strongly disincentives many of those subject to it from complying with the above guidance, giving rise to serious health risk for them, the people with whom they live and the general public.

Migrants with LLTR subject to NRPf conditions

Section 3(1)(c) Immigration Act 1971 (as amended) provides that where a person who is not a British citizen is granted LLTR, it may be granted subject to a NRPf condition.

Many migrants with LLTR subject to NRPf conditions are in financially precarious positions and have insecure working conditions that require their attendance for remuneration. Further, many have underlying health conditions that make them especially vulnerable to COVID-19. There is evidence that women—particularly single mothers with sole responsibility for childcare—pregnant women, and disabled people are disproportionately subject to NRPf conditions.²

For many, their NRPf condition may mean that they are compelled to continue to work (and risk exposure to / transmission of COVID-19) because they cannot fall back on public funds in the UK. Put simply, such migrants cannot afford to socially distance or self-isolate.

Many such migrants live in crowded accommodation with children and/or other migrants also subject to NRPf conditions. Exposing them to an increased risk of infection creates a significant knock-on risk for the people that they live with, who are also disproportionately vulnerable. Of course, the greater the overall transmission rate, the greater the risk to the general public.

Undocumented migrants

Undocumented migrants are also subject to the NRPf system and all of the above applies to them with yet greater force – they are likely to work in extremely insecure conditions, to be particularly vulnerable and to live in particularly crowded and insalubrious conditions.

Notwithstanding their irregular immigration status, it is strongly in the public interest for undocumented migrants to be permitted to access the social security system for the duration of the emergency. Further, for this measure to be effective, it is essential that they are permitted to do so without fear of doing so leading to subsequent immigration enforcement action; there must be no subsequent data sharing for the purposes of immigration enforcement.

² See e.g. Agnes Wooley, 'Access Denied: The cost of the 'no recourse to public funds' policy', June 2019.

Available at:

<https://static1.squarespace.com/static/590060b0893fc01f949b1c8a/t/5d021ada54e8ee00013fe5b9/1560419116745/Access+Denied+-+V12+%281%29.pdf> (accessed 20.03.20).

Children Act 1989 and Care Act 2014 support cannot safely be relied upon as a backstop in this instance. Such support is difficult to access in ordinary circumstances; in the present crisis, there is a real risk that Local Authorities' will not be capable of carrying out their functions in this regard and that demand for such services will increase exponentially. We are already seeing cases of individuals struggling to access statutory support as a result of the COVID-19 pandemic.

Continuation of NRPF system unlawful

We consider that continuation of the NRPF system is unlawful for at least four reasons.

(1) Unlawful risk of human rights breaches

NRPF constitutes an unlawful risk of breaching individuals' rights under Articles 2 (right to life), 3 (prohibition on torture and inhuman or degrading treatment or punishment) and 8 (right to private and family life) European Convention on Human Rights ('ECHR').

Many individuals subject to the NRPF system will face a choice between risking exposure by going out to work or becoming destitute as a result of having no income for a prolonged period of time. Knowingly putting individuals at risk of increased exposure to COVID-19 is a serious and unjustifiable risk to their health, and to the health of the wider community. The European Court of Human Rights has repeatedly held that States should take measures to limit individuals from being exposed to health risks (see, for example, *López Ostra v. Spain* (1995) 20 EHRR 277). Requiring individuals to expose themselves to a high risk of a potentially fatal infection is not lawful. The alternative of prolonged destitution constitutes an unlawful risk of breaching Articles 3 and 8 ECHR (see *R. (Adam, Limbuela and Tesema) v. Secretary of State for the Home Department* [2005] UKHL 66). Further, continuing to impose NRPF conditions at this time poses a risk of a breach of Article 14 ECHR (non-discrimination), read by reference to Articles 2, 3 and 8, since NRPF conditions are disproportionately imposed on women, in particular single mothers, and disabled people.

(2) Continuation of system unreasonable

The Government's guidance provides that individuals should be social distancing to reduce the risk of infection and self-isolating if / when symptoms emerge. The continuation of the NRPF system seriously undermines this as it compels a disproportionately vulnerable cohort to increase their risk of infection. They will then return to crowded accommodation where they risk infecting another disproportionately vulnerable cohort. Any increase in the transmission rate aggravates the risk to the most vulnerable members of society at large. In these circumstances, the continuation of the NRPF system is unreasonable.

(3) Inadequate consideration of suspension

Any decision to continue the NRPF system without fully considering the public health implications would be in breach of the duty of inquiry (see *Secretary of State for Education and Science v Tameside MBC* [1977] AC 1014) and the Public Sector Equality Duty under section 149 Equality Act 2010 (see *Bracking and others v Secretary of State for Work and Pensions* [2014] Eq LR 60; [2013] EWCA Civ 134).

(4) Undermining legislative intent

The Home Office's NRPF policy, contained in 'Family Policy, Family life (as a partner or parent), private life and exceptional circumstances' (Version 5.0),³ provides that Home Office caseworkers have a discretion to lift an NRPF condition attached to a grant of LLTR where certain criteria are met. This includes where they are presented with:

"[E]xceptional circumstances in [an applicant's] case relating to their financial circumstances which, in your view, require the no recourse to public funds condition code not to be imposed or to be lifted."

On any analysis, the current public health emergency must constitute such exceptional circumstances.

Under the guidance, for an individual's NRPF condition to be lifted they must submit an application with evidence of their circumstances. It is not feasible to expect all individuals subject to NRPF conditions to submit applications. Our organisations are unable to assist on the scale needed, in particular due to reduced staffing levels and other practical challenges posed by COVID-19. In any event, the situation is urgent, and our service users cannot wait for their applications to be decided. For those who are undocumented or have various other visas, there is no such application available.

There is currently no effective system in place for individuals to apply to have their NRPF conditions urgently lifted on a case-by-case basis. In passing the Immigration and Asylum Act 1999, Parliament intended for there to be a safety net to avoid condemning people to destitution and ensure compliance with the Human Rights Act 1998. Parliament's intention is reflected in the Home Office's NRPF policy, which provides for conditions to be lifted in, *inter alia*, exceptional circumstances. As mass individual applications to have NRPF conditions lifted are not feasible during the public health emergency, if the Home Secretary refuses to lift all NRPF conditions she would be unlawfully undermining the legislative intent of Parliament in providing for a safety net (see *Padfield v Minister of Agriculture* [1968] AC 997).

Conclusion

By no later than **3pm on 15th April 2020**, please confirm that you will be immediately suspending the No Recourse to Public Funds ('NRPF') system in its entirety. Please send the response by email to Eve Dickson, eve.dickson@project17.org.uk

If we do not receive such confirmation by that time, we will consider bringing legal action on the above and/or alternative grounds.

Yours sincerely,

Abi Brunswick, Director, Project 17
Sally Causer, Director, Southwark Law Centre
Caz Hattam, Coordinator, The Unity Project
Pragna Patel, Director, Southall Black Sisters
Anita Hurrell, Head of the Migrant Children's Project, Coram Children's Legal Centre

³ Available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/851342/family-life-as-a-partner-or-parent-private-life-and-exceptional-circumstances-v5.0-ext.pdf (accessed 20.03.20).

Roopa Tanna, Solicitor, Islington Law Centre
Anna Skehan, Specialist Children and Young Person's Immigration Solicitor, Migrant and Refugee Children's Legal Unit (MiCLU), Islington Law Centre
Hazel Williams, National Director, NACCOM Network
James Tullett, Chief Executive, RAMFEL (Refugee and Migrant Forum of Essex and London)
Sally Daghlian, CEO, Praxis
Dami Makinde, co-CEO, We Belong
Karolina Maroszek, Centre Manager, Haringey Migrant Support Centre
Dave Stamp, Senior Caseworker, ASIRT
Denise McDowell, Chief Executive, Greater Manchester Immigration Aid Unit
Nick Watts, Director, Together with Migrant Children
Musau Jose Kalanda, Senior Advice Worker, CARIS Haringey
Daf Viney, Director of Services, Hackney Migrant Centre
Gisela Valle, Director, Latin American Women's Rights Service (LAWRS)
Elizabeth Jiménez-Yáñez, Coordinator, Step Up Migrant Women Campaign
Chai Patel, Legal Policy Director, JCWI
Fizza Qureshi, Chief Executive Officer, Migrants' Rights Network