No Recourse to Public Funds

Change of Conditions Applications

Stakeholder Engagement document

January 2020

Contents

Introduction and summary

1. As part of the consent order in a recent claim for judicial review, the Home Office agreed to conduct a Public-Sector Equality Duty compliant review of the No Recourse to Public Funds policy. A “deep dive” or audit of Change of Circumstances applications was undertaken to examine the process and the characteristics of applicants. This included an analysis of case files.

2. This document summarises the main findings of a review process which took place between April and June 2019, notes the next steps, some of which are already underway, and invites views and comments.

Key findings

3. As part of the review, a file analysis was conducted of sample cases. It was found that the typical applicant going through the Change of Circumstances process is female, between 30 – 50 years old, from North Africa or South Asia. She entered the UK either illegally, as a visitor, or a student; has been in the UK less than 20 years and is now on the Family / Private Life route. She has 2 children and an income of £800 per month. She is unlikely to have applied for or been granted Asylum. She is likely to be applying within 6 months of her most recent immigration decision, on grounds of destitution and has a 25% chance of making a second application within 9 months. There is a 25% chance that she is already in receipt of public funds.

4. The grant rate for initial applications is between 60-65%, rising to 70% for second applications, leading to an overall grant rate of over 80%. This rises to 95% where the applicant is informed of exactly what evidence to submit. Applicants who are refused have higher incomes than applicants who are successful.

   We have to be cautious about assessing a small sample in detail but, whilst being cautious, if applicants are broken down into female and male, with children and without children, the highest grant of recourse to public funds is found among female applicants with children and the lowest is found among male without children. Men with children have a lower grant of recourse to public funds than women with children when only one child is involved, but this evens out as the number of children for male and female applicants draws level. What is clear is that the grant of recourse to public funds is significantly higher for applicants with children, than the grant rate for applicants without children. Whilst a degree of caution is necessary in forming conclusions, there is certainly a possibility that this is due to the male applicants in the sample having much higher incomes than the female applicants in the sample.

5. On the whole, nationality does not appear to be a significant factor; although within the sample applicants from Bangladesh had a lower rate of being granted access to public funds than other nationalities, being the only group in the sample with a lower than 50% grant rate.

6. The main reason for refusal of an application is insufficient evidence, with over half of refusals being for that reason. When we request evidence from customers, they appear

to have it in their possession, are usually able to supply it, and it leads to a positive outcome for their case.

7. Refusal decisions are not typically all subject to review by managers or senior caseworkers as standard prior to service, and there is no form of redress for applicants who wish to challenge a refusal decision.

8. In around 10% of cases we missed an opportunity to identify destitution at the time of the applicant's most recent immigration decision.

9. Quality assurance is assessed through casework team leaders who monitor their team's performance and also by a percentage sampling exercise undertaken by the independent quality team.

Further Potential Improvements

10. Our review has identified a number of areas where the Home Office could undertake further work:

- Clarify the evidence requirements to ensure that applicants have the best chance of success.
- Revise our policy around evidential flexibility, increasing the number of cases where we write-out for further evidence.
- Provide more detailed training for Family caseworkers than that provided to date to ensure that they consider destitution when making Family / Private Life or Leave Outside the Rules decisions.
- Introduce a mandatory destitution consideration when the applicant:
    - is switching routes into Family / Private Life or Leave Outside the Rules, or
    - has previously had a Code 1A condition or fee waiver, or
    - is in receipt of Public Funds.

- Consider adding the destitution test as a caseworker quality measure.
- Introduce a Second Pair of Eyes check on all decisions to refuse Change of Conditions.
- Implement a form of redress for applicants by introducing an informal administrative right of appeal which is non-charged and outside the formal Administrative Review process to ensure it can be implemented as quickly as possible. This process should be kept under review and consideration should be given to bringing it under the formal Administrative Review umbrella if warranted.

Discussion and invitation for views

Evidence requirements

11. The April to June review process last year found that not having provided sufficient evidence is the most frequent reason for refusal. The guidance and the application form outline a long list of documents to be provided as proof of financial circumstances and living arrangements. We would like to clarify the evidence requirements to ensure a greater clarity for applicants and decision makers leading to more first-time right decisions. We believe there should be clarity for applicants as to the likely outcome of an application in the light of clear requirements. In particular, we think that the most essential evidence should be financial, in the form of bank statements and then payments for accommodation.

12. **We would welcome your views on whether we should prioritise the evidence to be submitted in this way with bank statements and proof of payment for accommodation being openly described as the most acceptable, and other documents having less weight?**

We welcome the attempt to clarify necessary evidence. We want to note that the application will always require decision makers to exercise discretion in deciding on appropriate evidence, as income and accommodation is often precarious and informal for people who are destitute, and therefore difficult to evidence.

Possible issues with providing 'proof of payment for accommodation':

- According to our experience/research, applicants are often unable to afford private-rented accommodation and are therefore staying in inadequate accommodation with acquaintances/ex-partners/unofficial landlords/ladies and not paying formally for this accommodation (they may be contributing to costs, or paying in-kind e.g. through domestic work). This does not mean that the accommodation is adequate. We are concerned that focusing on providing 'proof of payment for accommodation' may lead decision makers to assume that free accommodation = adequate accommodation; in fact, the opposite is often the case.
- In cases where applicants *are* paying for accommodation, there needs to be clarity and/or considerable discretion as to what would be accepted as 'proof of payment for accommodation'. There must be allowances for at least the following - very common - scenarios (which often indicate the inadequacy of the accommodation):
    - there is no formal tenancy agreement;
    - rent paid is in cash; and/or
    - the landlord/lady is unwilling to provide any documentary evidence of arrangement (e.g. rent, conditions, etc).

Possible issues with providing bank statements:

- As has been highlighted to the Home Office in writing and orally on several occasions, applicants often face difficulties providing 6 months' worth of bank statements from all their accounts
- The 6 month period seems arbitrary and in some cases has caused unnecessary delays or refusals where older bank statements or statements from dormant accounts have not been submitted. In some cases, the applicant's financial situation has recently changed, making past income/expenditure irrelevant. Decision makers should be encouraged to use discretion as to the necessity of seeing bank statements from each account covering a full 6 months
- It should be made clear who, if anyone, aside from the applicant must provide their bank statements (e.g. children, partners, etc)
- Those recently granted Limited Leave to Remain (LLR) may not have bank accounts yet due to restrictions as a result of the Immigration Act 2014, or where they do, they will be unable to provide 6 months of statements if their account has been open for a shorter period of time.

Other recommendations:

- Simplifying the language on the form would likely also help applicants to understand what evidence they could submit.
    - Currently, the form asks for 'Documentary evidence that you meet the policy on granting recourse to public funds'. At the moment, those with limited English may struggle to even locate - let alone read through and understand - the guidance on what constitutes destitution. For those who cannot locate or read the policy on granting recourse to public funds, the above sentence is not helpful.
    - The form also simply requests 'evidence of your financial circumstances and living arrangements' - this could be further clarified in plainer English to avoid misunderstanding, for example: 'evidence to show that you cannot currently pay for rent and/or living essentials. This will include evidence of any income and evidence of where you are living at the moment and why this accommodation is not good enough. Please note that income does not mean only wages; it can include [money from friends or family, benefits payments and informal work]'
- An applicant's ability to afford adequate accommodation could be easily assessed using the Local Housing Allowance (LHA); it is calculated by a public body and relatively simple to navigate (https://lha-direct.voa.gov.uk/). It is straightforward to calculate the number of rooms that an individual or family requires in order to avoid statutory overcrowding according to Sections 325-6 of the Housing Act 1985 (as amended). For clarity, accommodation will be statutorily overcrowded when two persons of opposite sex who are not a couple must sleep in the same room

(excluding children under the age of 10),[1] or where the number of persons sleeping in a dwelling is in excess of the number permitted for the floor area and number of 'rooms available as sleeping accommodation'.[2] Therefore, in situations where the applicant's current accommodation is inadequate or where they face eviction, we propose the following process:

- decision makers calculate the required number of rooms for the applicant and dependants to avoid statutory overcrowding
- decision makers calculate the LHA in applicant's local authority for accommodation with this number of rooms
- decision makers can compare the LHA to the applicant's average monthly income to assess whether the remaining income after rent is sufficient to afford all other living essentials (including Council Tax and bills)

13. **We would also welcome your views on the current version of the form used when applying for Change of Conditions (**for convenience a copy is attached).

- The form would be more accessible if it had clearer subheadings and was written in plainer English
- The form should also provide a clear link to all relevant further guidance; the webpage[3] and form both refer to "documentary evidence that you meet the policy on granting recourse to public funds" without making clear where this policy can be found. We assume that this is a reference to the guidance currently in pp. 87-92 of the "Family Policy Family life (as a partner or parent), private life and exceptional circumstances" guidance. If so, this is not at all clear, or easy to find
- The form currently has tick boxes for applicants to indicate whether they consider themselves and/or their dependants to have a disability.
    - The complete lack of available data on the number of people with disabilities/with disabled dependants who have made the CoC application raises concerns about if or how this information is being used. We would like clarity about this.
    - We strongly recommend additional tick boxes relating to other protected characteristics and for these tick boxes to be used to aid both quick and good decision-making and monitoring applicants' other protected characteristics so as to comply with the PSED.
- We are concerned about suggestions in stakeholder meetings that the form be digitised given the multiple and serious issues with the digitisation of other immigration applications, many of which have already been raised elsewhere.
    - Please note that applicants may have limited computer literacy or computer access, so digitisation will be an additional barrier to being able to make the application (e.g. the average applicant you describe above is extremely unlikely to own a computer, or be able to easily access a public computer for the required length of time given work and/or childcare commitments).

[1] http://www.legislation.gov.uk/ukpga/1985/68/section/325
[2] http://www.legislation.gov.uk/ukpga/1985/68/section/326
[3] https://www.gov.uk/government/publications/application-for-change-of-conditions-of-leave-to-allow-access-to-public-funds-if-your-circumstances-change

    - Overstretched and under-resourced charities may also lack the required amount of computer access.
    - It will also make it significantly more difficult for representatives and advisors to help applicants if they are unable to see the full and complete list of questions and evidence before filling out the form
- Below are some additional suggested minor tweaks to sections of the form (sections which may cause more significant problems if forms are digitised):
    - 'Name of spouse/partner: Date of Birth of spouse/partner' - add 'if applicable'
    - 'Date on which and place where fingerprints were taken' - could you clarify why the applicant must provide this information? In our experience, only a tiny minority of people know this, and besides the Home Office will already have access to this information. If this information is not needed from the applicant, make this clear, or delete the question (please note that if the forms are digitised and it is not possible to progress without inputting an answer to this question (unless they are able to answer 'unknown'), this will force applicants to input false data simply in order to progress the application)
    - '4. Are there any particularly compelling welfare reasons relating to your child or children that you would like us to consider? Please explain.' - in our experience, applicants may very justifiably feel that it is obvious that their children are being negatively impacted by homelessness/lack of food and clothes as addressed elsewhere in the application, and may therefore not respond to this question directly or fully. Decision makers should be aware that this does not mean that there are no child welfare concerns

Invitation to attend in person at Shared Service Centres

14. Within the Home Office the UKVI/Family and Human Rights Unit recognise the need to identify customers who may require recourse to public funds at the earliest point in the application process. We will be working with our Service and Support Centre (SSC) network so that conversations around seeking recourse to public funds can be held with applicants immediately upon submitting their application for leave. This will also afford the applicant the opportunity to present any additional evidence about their circumstances which may support the application and assist with our consideration of recourse to public funds.

15. This would provide a way of supportively exploring cases where good reasons might exist for not providing information immediately, or where applicant circumstances are distressing and warrant further investigation.

16. We would welcome your views.

17. **In particular, we are interested in whether it is likely to contribute to reducing the need for a customer to submit a Change of Conditions application shortly after their leave has been granted?**

While we are in favour of people being granted leave with recourse (rather than having to submit CoC apps), we have major concerns about the prospect of verbal interviews, including but not limited to the following:

- Requests for documents

    - Whether attendance in person would reduce the need for a Change of Conditions application depends on the nature of the appointment at the centre and whether applicants are told in advance of any evidence they would need to bring.
    - It is unclear how a verbal interview would afford the applicant any greater opportunity to present any additional evidence than a request in writing (they will only present evidence that they have been told to bring, which would presumably be the same - or less - evidence that they would post/email otherwise).
    - We are concerned that the request be confirmed in writing so that if the person is being assisted by someone they can clearly see what is being requested and why, and also so that there is a paper trail available should it be necessary to challenge a decision or request.
- If attendance is required, we have concerns about the travel costs people would incur and how these would be met.
- There may be a need for legal representation at interviews, but lack of legal aid would exclude people from getting the necessary legal advice and representation.
- It would be important to understand the extent to which people would be able to prepare for the interview. Would there be any standard questions and could representatives and applicants request a copy?
- We would also want clarification of the status of the conversation and whether it would be a formal interview and whether a record would be made.
- We would also be concerned about applicants being misunderstood and misheard, and whether their comments would be recorded properly. Would conversations be recorded? Who would get a copy of the recording? If these were 'informal conversations' rather than 'interviews' the implication is that there would not be adequate safeguards and checks in place to protect the applicant.
- Interpreters and translators should be available on request. Applicants who are not confident in English might be disadvantaged, even with access to interpreters
- If this proposal goes ahead, we would also want to ensure that individuals can have advocates and/or support workers present during such interviews.
- Meeting directly with immigration officials can be difficult and distressing for individuals, many of whom are understandably concerned about enforcement action being taken against them. We would therefore be concerned that individuals may be fearful of attending interviews or appointments, particularly if they do not have legal representation.

We suggest that there are alternative ways to assess applicant's finances at the earliest point in the application process that may avoid the above issues.

Provision of information on applications made and granted

18. The review found that the percentage of applications granted recourse to public funds did not support the frequently made claim that the policy was obviously restrictive. We want to find a way of disseminating information to stakeholders on the overall number of applications made and granted, and number made and granted involving children.

19. However, we recognise that there are difficulties in this. For a start, the information will have to come from a data base of live cases that is updated when new cases are resolved or new stages. This can mean that there are variations in data extracted according to the same definition because new cases have been added or old cases removed based on the facts of those cases. This can give rise to misunderstanding unless accompanied by an explanation each time the data is used. There are also concerns within the Home Office at the amount of data that is shared informally with stakeholders and partners and that becomes circulated without adequate explanation.

20. **You are invited to note that we continue to seek to find a way of disseminating information to stakeholders on the overall number of applications made and granted, and the number made and granted involving children.**

The percentage of applications granted recourse to public funds is not the only (or indeed the most significant) statistic showing whether or not the policy is restrictive. This figure does not take into account how many destitute people *do not or cannot even make the application*. The inaccessibility of the application is highlighted and evidenced elsewhere (including TUP's June 2019 report), but in brief, barriers include lack of literacy, lack of legal support, evidential hurdles, the confusing nature of the application form and guidance (as referenced elsewhere in this document), etc. It is of course impossible for the Home Office or anyone else to conclusively evidence how many people are *destitute but unable to make the application at all*.

The data you mention would indeed be very helpful. It seems straightforward to provide the numbers of (successful/unsuccessful) applications made over a given period (with/without dependants). In the meantime, we will continue to rely on, disseminate and extrapolate from data from previous FOIs and research which show low success rates.

Additionally, as previously highlighted, the Home Office should make publicly available data about the number of people (successfully/unsuccessfully) applying who - or whose children/dependants - share protected characteristics.

- It is not clear how the Home Office is complying with the Public Sector Equality Duty without recording this information systematically.
- It is also difficult to hold the government to account without this data.
- We have referenced the tickboxes for disability on the form above; if the responses to these tickboxes are taken into account as we would hope and expect, then data collection at least on this particular protected characteristic should be/have been straightforward.

We have previously recommended that the above data should be published quarterly alongside public immigration statistics. We continue to seek to find a way of extracting this data.

It would also be helpful, for the purposes of situating this data, to have clear published statistics on the number of grants of LLR made with the NRPF condition, and the demographics of those given such grants, and which immigration routes they are on.

It would be helpful to understand in more detail any concerns that the Home Office may have about data being 'shared informally with stakeholders and partners' that is being circulated 'without adequate explanation'. If there are particular incidents of information-sharing that the Home Office is referring to - we would be grateful to know

precisely what these are so we are able to respond as part of an upfront discussion. We value honest conversations and we do not wish to jeopardise this process.

A means of challenging an adverse decision

21. Immigration status decisions (LTR, ILR etc) can be challenged either through the appeal system, or by a means of administrative review. Refusing to lift the NRPF condition when applications for a change of conditions have been made, or when a decision has been made under the provisions of Appendix FM Gen 1.11A cannot be challenged this way. We are exploring whether an adverse decision in these cases should have a means of challenge or review, in line with our practice in other areas of decision making, and we have now introduced a project piloting a system of redress appropriate to these decisions.

Applicants are now told:

"*You may apply for an administrative review if you think there has been a case working error or you have additional evidence to submit to demonstrate you meet the eligibility criteria of destitution as defined above.*

You have 14 calendar days from the date on which you received this decision to apply for administrative review."

22. **We would welcome your views on this approach.**

We do not feel it is possible to respond to this question without more detail being provided. It is not clear what is meant by 'a system of redress appropriate to these decisions'. Without further detail we are unable to give a meaningful response.

Applicants with British citizen children

23. The claim is frequently made that the policy discriminates because British citizen children in their own country cannot benefit from public funds to the same extent as other British citizen children. Although British citizen children can be involved, no immigration control is being applied to the child in these cases, and any differential treatment arises because of the mother's immigration status. We are committed to maintaining scrutiny on the equality impacts of our decisions, particularly for families with British citizen children, but also males without children; and Nigerian males and all applicants from Bangladesh. We will keep this position under review in our ongoing scrutiny of the Change of Conditions process, but we are not minded to recommend a change of policy in this area.

24. **Do you have any additional comments not put to us already?**

We believe that the above summary fails to comprehend the discrimination issue in saying that 'any differential treatment arises because of the mother's immigration status'. The point is that the parent's (most often mother's) immigration status should not be determinative of whether one British child can access benefits (including Child Benefit) and another British child cannot.

The Public Sector Equality duty came into being with cross-party support following the Macpherson report into the murder of Stephen Lawrence. Sir William's recommendations were intended to correct the institutional racism across the public sector that led to the authorities in that case - and in other contexts - failing to recognise the racist impacts of their policies and practices, nor taking any action to challenge or prevent institutional racism from occurring.

The Unity Project's report presented the Home Office with overwhelming evidence that this policy discriminates against Black British children leaving many to spend significant periods of their childhood in destitution, a level of poverty far below any that White British children are likely to experience, with obvious socio-economic, developmental and educational implications.

To respond by claiming that the policy is not discriminatory because it is aimed at Black British children's parents rather than the children themselves suggests that the Home Office is not genuinely examining the impact of this policy and has not taken on board in any respect the lessons learned from the Stephen Lawrence Inquiry.

Finally, if the Home Office is genuinely committed to 'maintaining scrutiny on the equality impacts of our decisions, particularly for families with British citizen children', then we would expect a full and immediate review and impact assessment of this policy, rather than this focus on the process of Change of Conditions applications. In order to allow for such a review to take place, it will be necessary, as a matter of urgency, for the Home Office to establish adequate data-collection processes as detailed earlier in this response.

The Home Office should be committed to maintaining scrutiny on the equality impacts of its decisions for those highlighted in Paragraph 23 (families with British citizen children, males without children; and Nigerian males and all applicants from Bangladesh), as well as for all other groups highlighted to the Home Office in this response and elsewhere. Maintaining scrutiny on the equality impacts of its decisions for one group does not and should not preclude maintaining scrutiny on the equality impacts of its decisions on any other group, particularly as these groups often overlap. We want to underline that the policy also discriminates against other groups including people with protected characteristics, low-income families, and other BAME children.

We also note that you refer exclusively to 'mother[s]' in paragraph 23 above, rather than 'parent[s]', which worryingly suggests that gender discrimination suggests that gender discrimination is embedded within this policy, and again brings us back to the concern raised in our covering letter that this review is tweaking the 'Change of Conditions' procedure, and not addressing the discrimination inherent in the way that the NRPF condition is applied.

Assessing the need for public funds when Leave To remain is requested

25. According to the audit carried out, around 40% of applicants for NRPF to be lifted did so within six months of receiving an immigration decision. This is particularly true of cases involving Family / Private Life or Leave Outside the Rules decisions.

26. We want to identify if more could be done at the point of making that immigration decision to assess whether the NRPF condition needs to be applied, or if it could be

not applied in appropriate cases, thereby saving the need for the second, separate application.

27. Where an applicant is granted leave to remain on the 10-year route, the decision maker can change the individual NRPF condition. We think that the opportunity to assess for destitution should be fully utilised at this point, although we are aware it may require additional information to be provided by an applicant who is seeking access to public funds. We are weighing up two different ways of doing this, one in which a mandatory consideration is made as to whether the applicant needs public funds. In the second option we would only do so if the applicant made a specific request.

28. **We would like your views on the following options.**

First option:

Introduce a mandatory destitution consideration to be carried out by the case worker when the applicant:
(a) is switching routes into Family / Private Life or Leave Outside the Rules, or
(b) has previously had a Code 1A condition or fee waiver, or
(c) is in receipt of Public Funds at the time of their application.

Second option:

Amend the application forms used in these cases to incorporate a specific request to be granted access to public funds on grounds of destitution, risk of destitution, or the needs of children arising from the applicant's low income.

Under the first option, all applicants in the above categories will be required to provide financial information and accommodation information so that an assessment can be carried out.

Under the second option, a consideration of whether or not to grant recourse to public funds will only be carried out on request.

We welcome the intent to identify if more could be done at the point of making an immigration decision to assess whether the NRPF condition needs to be applied, or if it could be not applied in appropriate cases, thereby saving the need for the second, separate application. We would like to stay in consultation about how to save time for both applicants and decision-makers by developing a way for applicants to indicate that their financial situation remains the same, without having to provide the same quantity of evidence at each application.

We believe that both options could be adopted, as we do not see them as being mutually exclusive.

All previously highlighted issues with submitting evidence to evidence destitution would continue to apply. Most obviously, meeting the arbitrary requirement of providing 6 months of bank statements often takes a long time as statements can be difficult to obtain quickly, if at all. If this requirement is maintained, people will be unable to

provide the evidence demanded of them in time for the application to extend their leave to be submitted, as those applications must be submitted before the current leave expires.

If a fee waiver has already been granted - could the form be amended to have a text box indicating that the financial circumstances remain the same? We appreciate this would be tricky if a significant amount of time had passed since the fee waiver was made but this would save a lot of time and hassle for all involved (applicants and decision makers).

We continue to recommend that NRPF is *not applied at all* to the below groups and therefore meanwhile that a 'mandatory destitution consideration' may also be appropriate for the following groups of people:

- All parents with dependent children under 18, including British children;
- Pregnant or maternity stage people;
- Disabled people and their dependants;
- People who have been subject to domestic abuse;
- Pensioners;
- Young people who have been in the UK more than half their life
- Victims of trafficking
- Care leavers

Specifically with regard to Option 1, the use of the term 'public funds' at point (c) is confusing. It would be useful to specify for decision-makers that the mandatory consideration should take place where support is being provided by a local authority children's or adult services. People applying for their first tranche of leave, or those with leave and an NRPF condition, will not be in receipt of 'public funds' as defined by the immigration rules; what is meant is presumably state support.

Review decisions internally instead of / in addition to review on request

29. If when granting leave the caseworker removes a recourse to public funds condition that is already there, this is now reviewed by a manager. Cases where the condition is not in place but is requested, and which are refused, are not subject to review by managers or senior caseworkers prior to being issued because an avenue of redress has been introduced as at 21 above.

30. We have considered introducing a requirement for a second person to review these decisions, but think that the extra time and delay involved may lead to it becoming a process that is less than satisfactory for applicants, and that the means of redress as set out above is preferable.

31. **Do you agree?**

Anything that prolongs the destitution that people affected by this policy have to suffer is to be avoided.

How to respond

Please send your comments, either attached to this document or separately, to the Home Office, Asylum and Family Policy Unit, 1st Floor, 2 Marsham Street, London SW1 4DF, or by email to FamilyOpsPolicy@homeoffice.gov.uk

Please respond by 14 February.