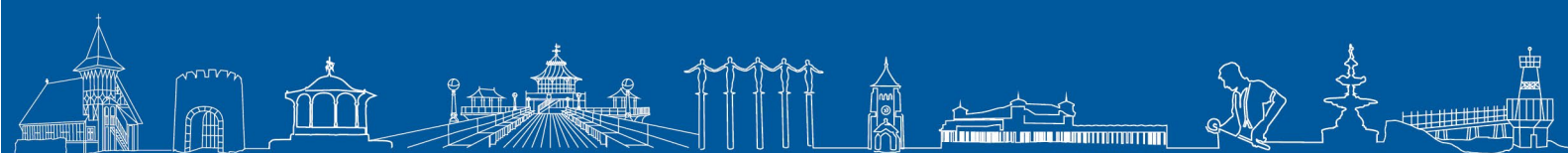


Adult Social Services and Housing

No Recourse to Public Funds Policy



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1. Document information

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2. Introduction

There are people residing in England who, due to their immigration status, are ineligible for most social welfare benefits and social housing. These people are described as having ‘no recourse to public funds’ (NRPF). Care and support is not classed as a “public fund” for immigration purposes so a person should not be refused a needs assessment or care and support solely because they have no recourse to public funds.

This document outlines the duties of adult social services in relation to providing care and support to people with no recourse to public funds. This policy applies to all staff in adult social services.

A quick reference NRPF practice checklist is available in [appendix 3](#). The full policy must be read in conjunction with the checklist.

3. Adult Social Services and Housing: Vision and Practice Framework

Adult social services is guided by our [vision for adult social services and housing](#) and our [practice framework](#).

3.1. Our vision

[Our vision for adult social services](#) outlines how we promote wellbeing by helping people to be as independent as possible for as long as possible. To deliver our vision we work closely with people with care and support needs, their families, partner agencies and the voluntary and community sector. Our aim is to empower communities, build relationships and strengthen networks to achieve the best possible outcomes for people with care and support needs. We are committed to:

- tailoring the information, advice and support we provide to meet the unique needs and preferences of each individual;
- working in partnership with people to identify the outcomes they want to achieve; and

- building effective working relationships with individuals, their families, and our partners. This includes the healthcare, and voluntary and community sectors. We do this to improve people’s support networks and to develop person-centred care, and strengths-based support plans.

3.2. Our Practice Framework

[Our Practice Framework](#) sets out complementary and interrelated approaches our practitioners and leaders should adopt to ensure that the work we do across our teams and services is underpinned by shared values, principles, beliefs and terminology. Our Practice Framework is underpinned by the strapline—*Your Strengths, Your Rights, Your Goals*. This was chosen by social workers, occupational therapists, and adult social care workers during a celebration of social care practice amidst the COVID-19 pandemic. This strapline reflects our commitment to a person-centred approach, recognising the unique strengths and aspirations of people in the provision of care. Our practice framework also outlines our commitment to anti-racist practice and a human rights-based approach.

4. Assessment framework for local authority assurance

[The Care Quality Commission \(CQC\) uses the assessment framework for local authority assurance to](#) assess how well we are performing against our duties under Part 1 of the Care Act (2014). Our No Recourse to Public Funds (NRPF) policy evidences our alignment with the quality statements outlined below. Quality statements are written from the perspective of the local authority (we) and people drawing on care and support (I).

- We maximise the effectiveness of people’s care and treatment by assessing and reviewing their health, care, wellbeing and communication needs with them.
- We actively seek out and listen to information about people who are most likely to experience inequality in experience or outcomes. We tailor the care, support and treatment in response to this.

- We work with people and our partners to establish and maintain safe systems of care, in which safety is managed, monitored and assured. We ensure continuity of care, including when people move between different services.
- When I move between services, settings or areas, there is a plan for what happens next and who will do what, and all the practical arrangements are in place.
- We work with people to understand what being safe means to them as well as with our partners on the best way to achieve this. We concentrate on improving people's lives while protecting their right to live in safety, free from bullying, harassment, abuse, discrimination, avoidable harm and neglect. We make sure we share concerns quickly and appropriately.

5. The legal context

5.1. The Care Act 2014

To receive assistance under the Care Act 2014, an adult must have care and support needs that arise from, or are related to, a physical or mental impairment or illness. We have a duty under [section 18 of the Care Act 2014](#) to meet care and support needs when these meet the eligibility criteria set out in the [Care and Support \(Eligibility Criteria\) Regulations 2015](#) and subject to financial assessment and ordinary residence considerations.

5.1.1. When the Care Act cannot be applied

[Section 21 of the Care Act](#) prohibits us from meeting the care and support needs of any person who is "subject to immigration control" (within the meaning of section 115 of the Immigration and Asylum Act 1999) and whose care and support needs have arisen solely because:

- They are destitute; or
- Because of the physical effects, or anticipated physical effects, of being destitute.

This prohibition also extends to providing care and support to the adult to meet a carer's needs for support.

A person could be "subject to immigration control" for these purposes in a variety of situations, for example:

- They have 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
- 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.

We may also be prohibited from meeting a person's care if the exclusions set out in [Section 54 and Schedule 3 of the Nationality, Immigration and Asylum Act 2002](#)

apply. This might include someone who is:

- In breach of immigration laws, such as a visa overstayer, illegal entrant, or "Appeal Rights Exhausted" ("ARE") asylum seeker.
- An ARE asylum seeker who has failed to comply with removal directions.
- A person with refugee status that has been granted by another European Economic Area (EEA) country, or the dependant of such a person.

However, even when an adult is in an excluded group, we are still required to:

- Undertake a Care Act needs assessment, and where appropriate, a human rights assessment.

- Provide emergency support, where required, whilst the Care Act needs assessment and, where appropriate, human rights assessment are undertaken.
- Provide advice and information about the help that is available for people who are homeless or threatened with homelessness. This includes to people who are ineligible for homelessness assistance under [Part 7 of the Housing Act \(1996\) due to their immigration status](#).

In addition to this we will also:

- Provide information and advice about national and local support services that people who have NRPF can access.

Prohibitions do not apply to [Zambrano carers](#). A 'Zambrano' carer is a person from a non-EEA state whose residence is required in order to enable a child or dependant adult, who is British, to live in the UK (or the rest of the EEA).

5.1.2. How to check a person's immigration status

It is necessary to obtain accurate information about a person's current immigration status to determine whether they are "subject to immigration control" or in another excluded group. As a person's immigration status can change, it is important that up-to-date information about this is obtained prior to undertaking or reviewing a human rights assessment. When an adult requests support, and clarity is required about their immigration status, we will gather information from the Home Office about their current immigration status. This will support us to establish what support options are available and whether an immigration-related exclusion to adult social services' support applies. We will also engage with partner organisations to establish whether a person's care and support needs have arisen due to destitution.

Immigration status information can be obtained directly from the Home Office by:

- Using the Home Office Status, Verification, Enquires and Checking email service at: ICSSVECWorkflow@homeoffice.gsi.gov.uk

Information obtained from the Home Office will need to be checked with the person directly and/or their legal representative in case a new application or appeal has been lodged or is being prepared.

EEA nationals are issued with a digital immigration status and can obtain / provide social workers with a “Share Code” – <https://www.gov.uk/view-prove-immigration-status>.

5.2. Schedule 3 and Human Rights Assessments

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 1 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, we 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.

When a person who is ‘in breach of immigration laws’ qualifies for care and support (i.e. has eligible care and support needs following a Care Act needs assessment), Schedule 3 requires that we 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 we 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 we, as the local authority, conclude that a person can freely return to their country of origin to avoid destitution in the UK, we 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 we are considering meeting under section 19(1), in the absence of a section 18 duty being engaged

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' (NRPF) 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.

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 us 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)

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 we 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, we 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, we 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 our 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).

If we establish, 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 these tests, see [chapter 3 of the guidance developed by the NRPf Network](#).

5.2.1. Who can undertake the assessment?

In North Somerset human rights assessments are undertaken by a registered social worker using the relevant NRPf templates (see [appendix two](#)). Support and guidance on how to complete the assessment is available from your line manager, Head of Service, and/or NRPf team champion who will have received specialist training. Sign-off will be required by the Head of Service and at the Eligibility Resource Forum (ERF).

5.2.2. When and how should the assessment be recorded?

When Schedule 3 applies to a person requesting or receiving social services' support, social workers must clearly document that they have considered the person's ability to return to their country of origin and what conclusion has been reached. The human rights assessment template ([see appendix two](#)) has been designed by the NRPf Network as a practical tool to help you record the relevant information that you will need in order to determine whether support can be withheld or withdrawn. Social Workers must use the NRPf templates and upload the completed document to the Liquidlogic Adults Social Care System (LAS). A case note referring to the fact the assessment has taken place must be created. The person should be provided with an accessible copy of the completed assessment. Social workers must explain the outcome of the assessment using an accessible person-centred form of communication, in the person's preferred language.

5.2.3. How is the human rights assessment template structured?

The human rights assessment template is structured in three parts to enable you to easily identify whether a short assessment is required and when it will be necessary to undertake a more detailed consideration of return:

- Part A: Background information
- Part B: Barriers to return
- Part C: Considering return

For more information about completing Part A, see [Chapter 3 of the NRPF guidance](#).

For more information about completing Part B, see [Chapter 4 of the NRPF guidance](#).

For more information about completing Part C, see [Chapter 5 of the NRPF guidance](#).

5.2.4. What are the possible outcomes?

Social workers will reach one of the following three conclusions when a human rights assessment has been completed:

- A legal barrier or practical obstacle to return is identified.
- No barrier to return is identified but the local authority identifies that the person requires immigration advice about their options before any conclusions about return can be drawn.
- No barrier preventing return is identified and the local authority concludes that return will not give rise to a breach of human rights.

5.2.4.1. A legal barrier or practical obstacle to return is identified.

When a legal barrier or practical obstacle to return is identified, social services' support can be provided to prevent a breach of human rights (Article 3) (when the person qualifies for this). When support is provided, it will be necessary to regularly review the status of the barrier and to identify what steps may need to be taken when it is reviewed.

5.2.4.2. *No barrier to return is identified but the local authority identifies that the person requires immigration advice about their options before any conclusions about return can be drawn.*

If we identify that a person requires immigration advice about their options before any conclusions about return can be drawn, we can provide care and support to prevent a breach of human rights (Article 3) (when the person qualifies for this). The person will need to be signposted to an immigration adviser and the progress of this regularly reviewed.

5.2.4.3. *No barrier preventing return is identified and the local authority concludes that return will not give rise to a breach of human rights.*

When a person can return to their country of origin to avoid a breach of human rights arising from their destitution in the UK, there will be no duty to provide social services' support. Instead, assistance with return can be offered. We may need to provide time-bound accommodation and financial support if the person intends to return and must give a reasonable notice period of when this support will end. Any decisions about time limited support will be made by ERF.

Where a person with refugee status abroad or an EEA national in respect of whom travel arrangements have been made by a local authority fails to implement or co-operate with those travel arrangements, the local authority cannot provide further accommodation for that person, save in very limited circumstances.

If the person indicates that they are not intending to take up an offer to support them to return to their country of origin, they will need to be provided with appropriate signposting information, such as how to access Home Office asylum support, local charities, and immigration advisers. See Regulation 6 of the [Withholding and Withdrawal of Support \(Travel Assistance and Temporary Accommodation\) Regulations 2002](#).

5.3. 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) of the Care Act 2014 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.

Section 21(4) of the Care Act 2014 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.

5.3.1. 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.

5.3.2. Schedule 3 and carers

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 we will only be able to meet a carer's care and support needs when we have 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.

Schedule 3 does not prevent us from undertaking a carer's needs assessment.

5.3.3. Direct payments

In the event we determine that there is a duty to meet a carer's needs, or if we decide to meet their 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 us 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.

5.3.4. 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, we 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, we must regularly review the situation and consider how the person's needs can be met should the carer's circumstances suddenly change.

5.4. Hospital discharge

The [Hospital Discharge and Community Support Guidance](#) reflects the changes to hospital discharge processes implemented by the [Health and Care Act \(2022\)](#).

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, a Care Act

needs assessment must be carried out to determine 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. A person with no recourse to public funds can also be discharged into NHS funded step-down accommodation following the Discharge to Assess, Home First model.

We will work in partnership with colleagues in the NHS to determine how the persons 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.

When a person is being discharged from hospital, or is exiting a step-down placement, it may be necessary for us to provide emergency accommodation under section 19(3) of the Care Act whilst the Care Act needs assessment, and any subsequent human rights assessment, is being completed. For more information about meeting urgent needs pending the outcome of the needs assessment, [see section 3.3](#) of NRPF Network's guidance.

For more information on hospital discharge and NRPF please see [section 9 of the Assessing and supporting adults who have no recourse to public funds \(England\)](#).

5.5. Section 117 aftercare

If a person has been detained under Section 3, 37, 45A, 47 or 48 of the [Mental Health Act 1983](#), they may be provided with aftercare under Section 117 of the Mental Health Act. Aftercare services are not classed as a "public fund" for immigration purposes and are not prohibited by Section 54 or Schedule 3 of the Nationality, Immigration and Asylum Act 2002. They can therefore be provided to a person regardless of their immigration status and do not require a human rights assessment.

5.6. 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.

5.7. Children's services and NRPF

We 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.

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.

Assessments under the Children Act 1989, and any supplementary human rights assessments that are required to determine care and support needs under the Children Act, must be completed by the relevantly trained professional in [children's services](#).

The NRPF's Network have published:

- [Guidance for social workers and other council officers working with children within families with no recourse to public funds who are destitute or at risk of homelessness.](#)
- [Guidance for social workers and personal advisers working with care leavers who are without a form of settled immigration status.](#)

When making a referral to children's services it is important to let the family and/or young person know what you are doing and why. The above guidance will help you explain to them your reasoning for the referral to children's services. This information should be shared in an accessible format, in the preferred language of the person you are referring.

5.8. Asylum seekers

An asylum seeker is not excluded from social service support while they are awaiting a decision from the Home Office. As such, eligibility for care and support will be established through a Care Act assessment.

Asylum seekers with pending asylum or Article 3 human rights applications may apply for support from the Home Office under [Section 95 of the Immigration and Asylum Act \(1999\)](#); please refer to NRPF Network guidance for further information on [Home Office support](#).

If an asylum seeker has exhausted their appeal rights and fail to comply with any removal directions that are imposed, they are excluded from receiving support. In such instances, they are only eligible for care and support if it is established that not providing them with support would breach their human rights.

5.9. British Citizens returning to England after a period of living abroad

[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 area, they can be considered to have no settled residence and provided with services if they are in urgent need of care and support.

5.10. Safeguarding

Our adult safeguarding duties apply regardless of immigration status. If safeguarding concerns are identified, and the person appears to have needs for care and support a referral to the adult safeguarding team **must** be made. Social workers should refer to [North Somerset Safeguarding Adults Board policies and procedures](#) for further information.

5.11. Withdrawing accommodation and financial support provided under the Care Act

[The provision of accommodation and financial support under the Care Act may be withdrawn if:](#)

- 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 Care Act's eligibility criteria.
- 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, so care and support can no longer be provided.

If care and support is withdrawn, we will provide the person with information and advice about local and national support available. 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.

The information will be provided in an accessible format in the person's preferred language.

For more information on withdrawing support please see the NRPF Networks [Assessing and supporting adults who have no recourse to public funds \(England\) guide – section 6.](#)

5.12. Adult Dependent Relatives (ADR) settled in the UK

ADRs whose needs can only be reasonably and adequately met in the UK have [full access to the NHS and local authority social care services](#) (where their sponsor has settled status or is a British citizen).

Successful applicants for leave to remain in the UK under the ADR route have demonstrated that:

- Because of age, illness or disability, they require long-term personal care: (that is, help performing everyday tasks, for example washing, dressing and cooking).
- They are unable, even with the practical and financial help of the sponsor, to obtain the required level of care in the country where they are/were living

because it is not available and there is no person in that country who can reasonably provide it or because it is not affordable

6. Feedback

We value your feedback and welcome both compliments and areas for development. [You can send us feedback through our website](#). If you have any concerns about any action or decision taken by Adult Social Services and Housing, you should initially talk to the person you normally talk to. You can also contact our complaints manager at:

Complaints Manager

Adult Social Services and Housing

Town Hall

Walliscote Grove Road

Weston super Mare

BS23 1UJ

Telephone: 01275 882171

Email: complaints.manager@n-somerset.gov.uk

7. Accessible information

Council documents can be made available in large print, audio, easy read, and other formats. Documents on our website can also be emailed to you as plain text files.

Help is also available for people who require Council information in languages other than English. Please email adultspolicy@n-somerset.gov.uk or ring 01934 888 888.

Appendix 1: Key guidance and legislation

[Care Act 2014](#)

[Mental Health Act 1983](#)

[Children Act 1989](#)

[Immigration Act 1971](#)

[Immigration Act 2014](#)

[Immigration Act 2016](#)

[Immigration and Asylum Act 1999](#)

[Nationality, Immigration and Asylum Act 2002](#)

[Immigration, Asylum and Nationality Act 2006](#)

[Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004](#)

[Immigration \(European Economic Area\) Regulations 2016](#)

[Withholding and Withdrawal of Support \(Travel Assistance and Temporary Accommodation\) Regulations 2002](#)

[NS ASSH Practice Framework](#)

[NRPF Network guidance](#)

[Working Together to Safeguard Children 2023](#)

[North Somerset Safeguarding Adults Board policies and procedures](#)

Appendix 2: Human rights assessment template



For full information about when a human rights assessment is required and how to complete this template, see the accompanying NRPF Network practice guidance:

[When and how to undertake a human rights assessment](#)

(<https://guidance.nrpfnetwork.org.uk/reader/human-rights-assessment>).

When can the template be used?

This template is a tool to assist local authorities with the process of undertaking a human rights assessment to determine whether social services' support can be provided to a person who is 'in breach of immigration laws' (i.e. is without lawful status in the UK) or is in another excluded group listed in [section 3.3 of the practice guidance](#).

When a person who is 'in breach of immigration laws' qualifies for social services' support, Schedule 3 of the Nationality, Immigration and Asylum Act 2002 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 order to determine this, the local authority must undertake a human rights assessment in addition to the needs assessment.

Schedule 3 only applies when a person qualifies for support or assistance under the legislation that is listed at [section 3.1 of the practice guidance](#). This legislation enables accommodation and financial support to be provided to people with no recourse to public funds. For the purpose of the template and practice guidance, the term 'social services' support' refers to:

- Care and support (including accommodation and financial support) provided to an adult with care needs.
- Accommodation and financial support provided to a family with a child in need.
- Leaving care support provided to a former looked after child who is age 18 or older.

The template can be used by local authorities in England, Wales and Scotland, and Health and Social Care Trusts in Northern Ireland.

When is a human rights assessment not required?

This template is intended to be used solely for the purpose of applying Schedule 3 and determining whether a person is able to return to their country of origin to avoid destitution in the UK. It is not intended to be used to inform other human rights-based

considerations that may be made when needs assessments are undertaken by social services.

Schedule 3 does not apply to a person who is seeking asylum or who is lawfully resident in the UK. In such cases, a human rights assessment will not be required and the usual eligibility criteria for social services' support must be applied. For example, the template should not be used when a person has leave to remain that is subject to the 'No Recourse to Public Funds' (NRPF) condition or pre-settled status granted under the EU Settlement Scheme.

How to use the template

The template is set out in three parts:

- Part A: Background information
- Part B: Barriers to return
- Part C: Considering return

When a barrier to return to country of origin is identified, it will only be necessary to complete parts A and B of the template. When no barriers to return are identified, all three parts will need to be completed.

Local authorities are welcome to reproduce or adapt the template to reflect internal service arrangements but are advised to seek advice from their own legal team before any changes are made. It is up to a local authority whether to use the template in all cases when Schedule 3 applies, in order to clearly document any identified barriers to return, or only when return is being considered and part C needs to be completed.

This template may be updated at any time by the NRPF Network, so it is advisable to refer to the current version of the template and accompanying guidance on our website at: <https://www.nrpfnetwork.org.uk/information-and-resources/guidance-for-councils>.

Disclaimer

This is the template that North Somerset Council will use. No other local authority should rely on this template without seeking their own advice.

Feedback

We are keen to ensure that the template remains a useful tool. If you have any feedback or any questions about using the template, please get in touch. You can send

us feedback through our [website](#). If you have any concerns about any action or decision taken by Adult Social Services and Housing, you should initially talk to the person you normally talk to. You can also contact our complaints manager at:

Complaints Manager,

Adult Social Services and Housing
Town Hall
Walliscote Grove Road
Weston super Mare
BS23 1UJ

Telephone: 01275 882171

Email: complaints.manager@n-somerset.gov.uk

Part A: Background information

To be completed in all cases. For help completing this part of the assessment, see [chapter 3 of the practice guidance](#).

Main applicant details

Name	
Date of birth	
Nationality	

Dependant details (family households)

Dependant one

Name	
Date of birth	
Relationship to main applicant	

Dependant two

Name	
Date of birth	
Relationship to main applicant	

[Add additional dependants as required.]

Eligibility for social services' support

A.1 What is the legal basis for providing support?

Circle as appropriate:

- a. **Child in Need**
- b. **Leaving care duties apply to former looked after child**
- c. **Adult has eligible care and support needs**
- d. **Discretionary power to support adult with care and support needs**

e. The person is a Zambrano Carer

A.2 Summarise the presenting reasons and/or why the person/family qualifies for accommodation and financial support.

A.3 Provide details and the outcome of any needs assessment/care plan/pathway plan that has been undertaken.

A.4 Is the person/ family reliant on the local authority to provide accommodation and financial support to avoid an article 3 breach arising from their destitution in the UK?
Circle as appropriate

Answer: **YES / NO**

Briefly explain this answer with reference to the outcome of the needs assessment/care plan/pathway plan. More detail will be required if the local authority is establishing whether a discretionary power is engaged to accommodate an adult with care and support needs and alternative sources of support have not already been considered.

Excluded group

A.5 Record the current immigration status of the main applicant.

Date of most recent immigration status check:

A.6 Which excluded group applies to the main applicant?
Circle as appropriate

- a. In breach of immigration laws**
- b. Refugee status granted in other EEA state**
- c. Failed to comply w/removal directions – ARE asylum seeker**

Summary

A.7 Does the person/ family qualify for social services' support?

Circle as appropriate

Answer: Yes / No

A.8 Would the person/ family be destitute and at risk of an Article 3 breach if the local authority does not provide support when they qualify for this?

Circle as appropriate

Answer: Yes / No

A.9 Is the main applicant in an excluded group?

Circle as appropriate

Answer: Yes / No

Next steps

When all answers to questions A.7 – A.9 are 'yes', complete part B of the template.

When one or more answers questions A.7 – A.9 are 'no', do not proceed with the assessment as there is no legal requirement to consider the person's ability to return to their country of origin.

Part B: Barriers to return

When a person/ family qualifies for social services' support and is in an excluded group, the local authority must identify whether there is a legal barrier or practical obstacle preventing the person/ family from being able to return to their country of origin.

For family households, it is also necessary to record any legal barriers or practical obstacles that may apply to other members within the household.

For help completing this part of the assessment, see [chapter 4 of the practice guidance](#).

Legal barriers

Human rights-based immigration claims

B.1 Does the person have a pending human rights application?

Circle as appropriate

Answer: **YES / NO**

Provide details with reference to any evidence.

B.2 Does the person have a pending human rights appeal?

Circle as appropriate

Answer: **YES / NO**

Provide details with reference to any evidence.

B.3 Does the person have an outstanding procedural right to pursue a human rights claim from within the UK?

Circle as appropriate

Answer: **YES / NO**

Provide details with reference to any evidence.

Other legal action

B.4 Is there any other legal action pending or legal reason that requires the person to be in the UK or prevents them from leaving?

Circle as appropriate

Answer: **YES / NO**

Provide details with reference to any evidence.

Practical obstacles

Medical/ health needs

B.5 Does the person have a medical condition, disability, or mental health condition, which prevents them from being able to travel or the local authority from being able to make return arrangements?

Circle as appropriate

Answer: **YES / NO**

B.6 If they have a health condition affecting travel, provide details with reference to any evidence and any information about how travel may be facilitated.

Travel documentation

B.7 Does the person have valid travel documentation?

Circle as appropriate

Answer: **YES / NO**

B.8 If they do not have a valid document, can they reasonably be expected to obtain one?

Circle as appropriate

Answer: **YES / NO**

Provide details with reference to any evidence. If they can reasonably be expected to obtain travel documentation, explain how this can be obtained.

Funds

B.9 Does the person have sufficient funds to arrange their travel?

Circle as appropriate

Answer: **YES / NO**

B.10 If they do not have funds to arrange travel, explain how travel can be funded and arranged.

Other obstacles

B.11 Are any other practical obstacles identified?

Circle as appropriate

Answer: **YES / NO**

Provide details with reference to any evidence, and explain how any identified obstacles may be overcome.

Conclusion

B.12 Summarise or list any barriers that have been identified based on the answers given to questions B.1 – B.11.

B.13 What is the outcome of the assessment?

Please circle as appropriate

- a. There is a barrier, so the person/family cannot be expected to return**
- b. There are no barriers preventing return**

Next steps

When a barrier to return is identified, the person/ family cannot be expected to return and social services' support can be provided to prevent a breach of human rights, so the assessment can be concluded. To record what action will be needed to review this situation, complete B.14 & B.15 and sign off the assessment.

When no barriers preventing return have been identified, return to country of origin can be considered and Part C can be completed.

Further action when a barrier is identified

B.14 Confirm how regularly the status of the barrier needs to be reviewed and how this will be done.

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Date of next review:

B.15 Confirm when and how the main applicant has been informed about the outcome of the human rights assessment.

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Sign-off

	Name	Signature	Date
Caseworker/social worker			
Manager			

Part C: Considering return

When there are no barriers preventing the person/ family from being able to return to their country of origin, the local authority must consider whether return would give rise to a human rights breach, taking account of the outcome of decisions that have been made by the Home Office and/ or appeal courts. If a barrier to return has been identified in part B then part C does not need to be completed.

For family households, the circumstances of each household member will also need to be considered in this part of the assessment.

For help completing this part of the assessment, see [chapter 5 of the practice guidance](#).

Summary of relevant issues

C.1 Summarise information relevant to the assessment, such as: brief overview of local authority involvement and costs; health issues and/or care needs; family circumstances; immigration history etc.

Main applicant's views

C.2 Record the person's views about their life in the UK/ return/ future plans. For family households include the views of any children (where this is age appropriate).

Home Office decisions and legal advice

C.3 Record the following information:

- Dates of Home Office/ appeal court decisions relating to relevant immigration or asylum claims.
- The outcome of these decisions.
- Any findings that have been made in relation to human rights breaches (if this information is available/ known).

C.4 Record the date and outcome of most recent independent legal advice sought by the main applicant in relation to their immigration or asylum case.

Article 2 & Article 3

Article 2: the right to life

Article 3: the right not to be subjected to torture or to inhuman or degrading treatment or punishment

Issues to consider

C.5 Summarise the relevant issues relating to risk on return that may give rise to a breach of Articles 2 and/or Article 3, such as availability of medical treatment or protection (asylum) grounds.

C.6 Does the main applicant need to obtain further legal advice about their immigration matter before return to country of origin can be considered?

Answer:

Circle as appropriate

Answer: **YES / NO**

Explain this answer

Next steps

When relevant matters have not been put before the Home Office, the local authority will not be able to conclude whether return to country of origin would breach a person's human rights.

If the person requires further legal advice about their immigration options, complete the conclusion (C.12 & C.13) and next steps (C.14 & C.16), or alternatively pause the assessment whilst the person is obtaining advice.

If the person does not require further legal advice, go to C.7.

Human rights breach

C.7 Would return to country of origin give rise to a breach of Articles 2 or 3?

Circle as appropriate

Answer: **YES / NO**

Provide details with reference to any evidence and factual information being relied upon, including decisions made by the Home Office/ appeal courts (where applicable).

Article 8

Article 8: the right to respect for private and family life

Issues to consider

C.8 Summarise any relevant issues relating to the person's family and/or private life in the UK. For a family ensure that this is considered for all household members.

C.9 Does the main applicant need to obtain further legal advice about their immigration matter before return to country of origin can be considered?

Answer: *Circle as appropriate*

Answer: **YES / NO**

Explain this answer

Next steps

When relevant matters have not been put before the Home Office, the local authority will not be able to conclude whether return to country of origin would breach a person's human rights.

If the person requires further legal advice about their immigration options, complete the conclusion (C.12 and C.13) and next steps (C.14 & C.16), or alternatively pause the assessment whilst advice is being obtained.

If the person does not require further legal advice, go to C.10.

Best interests of a child (family households only)

C.10 Would return to country of origin be in the best interests of any children in the household?

Answer: *Circle as appropriate*

Answer: **YES / NO**

Explain this answer.

Human rights breach

C.11 Would return to country of origin give rise to a breach of Article 8?

Answer: *Circle as appropriate*

Answer: **YES / NO**

Explain this answer making reference to any evidence and factual information being relied upon, including decisions made by the Home Office/ appeal courts (where applicable), and the answer to question C.10.

[Replicate these sections if a potential breach of any other Articles of the European Convention on Human Rights also needs to be considered.]

Conclusion

C.12 Based on the facts of the case and what can reasonably be established by the local authority, will return to country of origin cause a breach of human rights?

Answer: *Circle as appropriate*

Answer: **YES / NO**

Explain this answer with reference to the outcome of questions C.6 or C.9 (if the person requires legal advice), or C.7 & C.11 (if return to country of origin has been considered).

C.13 What is the outcome of the human rights assessment?

Answer: Select one outcome

Next steps

If relevant matters need to be put before the Home Office before conclusions about return can be drawn, social services' support can be provided to prevent a breach of human rights whilst legal advice is being obtained by the person/ family. To record what action will be need to be taken and how progress will be reviewed, complete C.14 & C.16.

If a breach of human rights can be avoided by return to country of origin, social services' support can be withheld or withdrawn, although the local authority can provide assistance with return and support whilst this is being arranged. To record what action will be need to be taken, complete C.15 & C.16.

Further action: support provided in the UK

C.14 Confirm what action needs to be taken (such as access to legal advice), how regularly the situation will be reviewed, and how this will be done.

Date of next review:

Further action: withholding or withdrawing support

C.15 Confirm the proposed next steps, including any support that will be provided whilst return is arranged.

End date of service (if applicable):

Informing the main applicant

C.16 Confirm when and how the main applicant has been informed about the outcome of the human rights assessment. Record their response if support is being withheld or withdrawn.

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Sign-off

	Name	Signature	Date
Caseworker/social worker			
Manager			

Appendix 3: NRPF checklist

- ✓ The person has requested an assessment under the Care Act.
- ✓ I have begun the assessment.
- ✓ I have checked whether the person is subject to immigration control.
 - I have obtained information about the persons immigration status using the Home Office Status, Verification, Enquires and Checking email service at: ICESSVECWorkflow@homeoffice.gsi.gov.uk
 - I have checked with the person that the information gained from the Home Office is accurate.
- ✓ I have considered whether the persons support needs have arisen solely due to destitution.
 - *Section 21 of the Care Act prohibits us from meeting the care and support needs of any person who is “subject to immigration control” (within the meaning of section 115 of the Immigration and Asylum Act 1999) and whose care and support needs have arisen solely because:*
 - *They are destitute; or*
 - *Because of the physical effects, or anticipated physical effects, of being destitute.*
- ✓ If the person does not have eligible care and support needs, I have given them accessible information and advice regarding the help and support they can access.
- ✓ If the person does have eligible care and support needs I have determined whether a human rights assessment is required.
 - *When a person who is ‘in breach of immigration laws’ qualifies for care and support (i.e. has eligible care and support needs following a Care Act needs assessment), Schedule 3 requires that we 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.*
 - *A human rights assessment does not need to be conducted if the person does not have eligible needs.*

- ✓ I have considered whether emergency support is needed whilst the human rights assessment is conducted. I have discussed my professional judgment with the head of service and at ERF.
- ✓ I have completed the human rights assessment (see appendix 2 for the template).
- ✓ I have reached one of the following conclusions:
 1. *A legal barrier or practical obstacle to return has been identified.*
 2. *No barrier to return has been identified but the person requires immigration advice about their options before any conclusions about return can be drawn.*
 3. *No barrier preventing return has been identified and, in consultation with senior members of the directorate, and where appropriate – the legal team, I have concluded that return will not give rise to a breach of human rights.*
- ✓ I have read section [5.2.4](#) of this policy and understood what to do in the event of each of the three outcomes. Where I do not understand I have sought advice from my team manager and/or a NRPF champion.
- ✓ The human rights assessment has been signed off by the Head of Service and at the Eligibility Resource Forum (ERF).
- ✓ I have uploaded the completed human rights assessment to the Liquidlogic Adults Social Care System (LAS) and created a case note referring to the fact the assessment has taken place.
- ✓ I have provided the person with an accessible copy of the completed assessment. I have explained the outcome of the assessment using an accessible person-centred form of communication, in the person's preferred language.