

What are the legal options? Care Act 2014? Mental Capacity Act 2005? Domestic Abuse? Modern Slavery Act 2015? Knowledge of NRPF and Human Rights legislation and GDPR and DPA 2018

No Recourse to public funds

Who has no recourse to public funds?

To identify the support options that are available to a non-UK national who is destitute or experiencing homelessness, it will be necessary to establish the person's immigration status and whether they have access to public funds (benefits and local authority housing assistance). A person will have no recourse to public funds when they are 'subject to immigration control'.

NRPF is a condition imposed by the Home Office on people subject to immigration control, excluding them from public funds (see below). People subject to immigration control include those who:

- Have leave to enter or remain with the NRPF condition, for example, a spouse visa or limited leave granted under the family or private life rules
- Require leave to remain but do not have it, for example, a visa overstayer, illegal entrant.
- Have leave to remain subject to a maintenance undertaking, for example, an adult dependent relative of a person who has settled status in the UK will have indefinite leave to remain (section 115 of the [Immigration and Asylum Act 1999](#))

Do we need to establish status?

- By sending an email request to: EvidenceandEnquiry@homeoffice.gsi.gov.uk. A form will be provided by the Home Office which will need to be completed by the social worker detailing the legal basis for requiring the information.

Care Act 2014 and NRPF

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

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

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

Section 9 of the [Care Act 2014](#) sets out the local authority's duty to undertake a needs assessment:

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

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

...

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

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

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

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

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

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

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

Section 11 of the Care Act 2014 may need to be considered- refusal of assessment.

When an assessment concludes that a person does not have eligible needs, the local authority will need to consider whether any non-eligible care and support needs can be met under section 19(1). This decision will be particularly important when a person with non-eligible care and support needs is experiencing homelessness.

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

Is emergency accommodation required?

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

*A local authority may meet an adult's needs for care and support which appear to it to be urgent (regardless of whether the adult is ordinarily resident in its area) without having yet—
(a) carried out a needs assessment or a financial assessment, or
(b) made a [eligibility] determination under section 13(1).*

This power enables a local authority to provide interim accommodation and financial support to a person with no recourse to public funds who would otherwise be destitute or homeless whilst a needs assessment is being undertaken

Is a human rights assessment required?

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

When Schedule 3 applies, the local authority will need to undertake a human rights assessment, in addition to the needs assessment, to determine whether care and support can be provided to the individual. When a person who has no lawful status qualifies for care and support, a human rights assessment must be undertaken. This applies when the duty to meet needs is engaged or when the local authority is considering whether its power to meet non-eligible needs is engaged. The human rights assessment will need to determine whether the person can be expected to return to their country of origin to avoid destitution in the UK. If there is a barrier preventing return, care and support can be provided. However, if there is nothing preventing the person from returning, the local authority will have no duty to provide care and support. Staff and managers overseeing needs assessments and managing cases will need to have 'legal literacy' and understand how their duties under the Care Act 2014 apply to an adult with no recourse to public funds. For example, an adult should not be refused care and support solely because they have no recourse to public funds. Such a consideration is irrelevant because social care is not a public fund for immigration purposes.

Human Rights Assessment

The limit to restrictions on access to support is whether the restriction will breach the individual's human rights, as set about in the Human Rights Act , 1998

It could be a breach of human rights if a person with NRPF is subject to:

- Domestic violence
- Inhuman or degrading treatment
- Lack of treatment for a medical condition, including mental health conditions
- Separation from their child or family
- Unfair treatment by a public body
- Disruption of personal dignity or private life

[NRPF Network | Assessments when the exclusion applies](#)

When the eligibility criteria are met, the duty to meet needs (**section 18**) will be engaged and the local authority must consider how to meet the person's needs for care and support. When a person with no recourse to public funds is experiencing homelessness, the local authority must consider whether accommodation can be provided. When the person has care and support needs that do not meet the eligibility criteria ('non-eligible care and support needs'), the local authority must determine whether the power to meet non-eligible needs (**Section 19(1)) is engaged**. This gives the local authority an opportunity to provide accommodation and financial support to a person who does not meet the eligibility criteria, but who is likely to experience a breach of human rights if they are homeless due to having complex or additional needs.

Affected provisions of the Care Act 2014

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

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

Schedule 3 does not prevent a local authority from:

- **Undertaking a needs assessment (section 9) or carers needs assessment (section 10)**
- **Meeting urgent needs for care and support whilst assessments are being undertaken (section 19(3))**

- **Undertaking its general duties with regards to providing information and advice (section 4) or prevention (section 2)**

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

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

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

Care Act 2014 and Social Services and Well-being (Wales) Act 2014 safeguarding.

Section 42 of the [Care Act 2014](#) requires a local authority to undertake a safeguarding enquiry when it has reasonable cause to suspect that an adult in its area (whether or not they are ordinarily resident there):

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

The local authority must make any necessary enquiries to:

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

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

Schedule 3 of the [Nationality, Immigration and Asylum Act 2002](#) does not prevent the local authority from undertaking a safeguarding enquiry and taking any necessary action to stop abuse or neglect when a person does not have lawful status.

The objectives of the enquiry include to:

- establish the facts;
- ascertain the individual's views and wishes;
- assess the needs of the adult for protection, support, and redress; and

- make decisions as to what follow-up action should be taken with regard to the person responsible, or the organisation, for the abuse or neglect (DH, 2016, paragraph 14.94).

Also consider principles of MSP and Section 68 advocacy.

What is the abuse or neglect?

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

The [Care and Support Statutory Guidance](#) specifically references modern slavery as examples of abuse:

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

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Domestic violence including:

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

...

Modern slavery encompasses:

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

Modern Slavery Act 2015

With the passing of the [Modern Slavery Act 2015](#) we now have a single act prohibiting various activities that come under the umbrella term 'modern slavery'.

All types of modern slavery involve violating a person's human rights, restricting their freedom and have an exploitative dimension. In a UK context it is generally accepted that there are several types of activity that amount to modern slavery, namely:

- human trafficking;
- forced or compulsory labour;
- sexual exploitation;
- domestic servitude;
- debt bondage;
- organ harvesting;

- financial exploitation;
- forced criminality, for example, working on cannabis farms.

Victims are often unwilling to come forward and identify themselves, some do not see themselves as victims, and some fear reprisals towards them or their families from their abusers. Victims may also not always be recognised as such by those frontline professionals who come into contact with them.

Human trafficking

Section 2 of the 2015 act prohibits human trafficking, that is arranging or facilitating the travel of another person with a view to the person being exploited. Whether or not the person consents to the travel element of the offence is irrelevant (section 2(2)).

Human trafficking consists of three components – the act (what is done), means (how it is done) and purpose (why it is done).

Sexual exploitation

This is the forcible or deceptive recruitment of women, men and children, for the purposes of forced prostitution or sexual exploitation.

Sexual exploitation often occurs in the off-street market, in advertised brothels and massage parlours or private homes. Men and women will often present as being 'happy' to do the work and it is only when you start speaking to them that you realise something isn't right, that someone is controlling the services they offer, the clients they see and the times they work, and taking the money they make.

In England and Wales, public authorities specified in section 52 of the Modern Slavery Act 2015, have a statutory Duty to Notify the Home Office when they come across potential victims of modern slavery.

This duty is discharged by either referring a potential victim into the National Referral Mechanism (NRM) where they are a child or consenting adult, or by notifying the Home Office where an adult does not consent to enter the NRM. Both a referral and a notification can be made through the Modern Slavery Portal. The portal can be accessed at: <https://www.modernslavery.gov.uk/start..>

National Referral Mechanism support

If the person consent they can access a range of support, material assistance, psychological support, legal advice, counselling emergency medical treatment translation. A bridge to lift out of exploitation, specialist support, rebuild lives. When a potential victim of trafficking or modern slavery is receiving accommodation through the National Referral Mechanism (NRM), it will be necessary to consider whether their care needs can be suitably met in the NRM accommodation. For example, it may be necessary to establish whether carers would be permitted to enter a safe house or whether any adaptations can be made in the accommodation, should these be required. If accommodation available through the NRM is not suitable to meet the person's care and support needs, the local authority may need to provide alternative accommodation under the Care Act.

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

For more information, see the Government's [National Referral Mechanism guidance: adult \(England and Wales\)](#).

What is the abuse or neglect?

Domestic Abuse

When working with victims of domestic violence and abuse, the first key principle to follow is to enquire safely about violence or abuse.

Safe enquiry means ensuring the potential perpetrator is not and will not easily become aware of the enquiry. It is a cornerstone of best practice in domestic abuse.

The [Domestic Abuse Act 2021](#) creates a statutory definition of domestic abuse for the first time: the behaviour of one person towards another if they are both 16 or over, they are personally connected to each other and the behaviour is abusive. Behaviour is abusive when it is physical or sexual abuse; violent or threatening behaviour; controlling or coercive behaviour; economic abuse; psychological, emotional or other abuse. The behaviour can be a single incident or a pattern of conduct.

This includes so-called 'honour'-based violence, female genital mutilation and forced marriage

Preventative and protective options:

In 2015 an offence of coercive and controlling behaviour was introduced under [section 76 of the Serious Crime Act](#). The government defines controlling behaviour as a range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape, and regulating their everyday behaviour. The Domestic Abuse Act 2021 extended the offence of coercive control so that it is no longer a requirement for perpetrators and victims to either still be in a relationship or to still live together when it occurs

Domestic violence protection notices (DVPNs) and orders (DVPOs)

DVPNs and DVPOs, which are provided for by sections 24 to 33 of the [Crime and Security Act 2010](#), are part of a number of different preventive options designed to keep victims safe and give them some breathing space by giving them a temporary respite from the abusive behaviour and allowing access and referral to support services without interference from the perpetrator. DVPNs and DVPOs always prohibit molestation of the person to be protected and, where they live in the same premises, can also prohibit their eviction or exclusion from the premises, prevent the person given the DVPN or DVPO from entering the premises, require them to leave the premises or stop them from coming within a specified distance of the premises.

DASH risk assessment framework

Multi agency risk assessment conferences

Independent domestic violence advocates

Cooperative working- (section 6/7) Care Act 2014

Working effectively with the police is a significant aspect of social workers' role in relation to domestic abuse cases. Most forms of domestic abuse now constitute a criminal offence while the police can also record and take action in relation to 'non-crime' domestic incidents. For example, some crimes such as stalking or coercive control require a pattern of behaviour, typically two or more incidents. In cases where there has been a one-off incident and the behaviour doesn't reach the threshold to be a criminal offence and will not unless it continues, the police may still intervene and take action, for example, through protection orders.

Other considerations

Children Act 1989

When a pregnant woman with no recourse to public funds presents as destitute or at risk of homelessness, in the first instance, the local authority would need to undertake a needs assessment. If the local authority determines that the eligibility criteria are not met, it must consider whether accommodation can be provided under section 19(1), including whether other support may be available to the expectant mother. Although the power to accommodate is set out in the Care Act, often Children's Services, rather than adult social care will take responsibility for providing accommodation and financial support to a pregnant woman with no recourse to public funds. A pre-birth assessment may need to be undertaken by Children's Services and a child in need assessment will be required when the child is born, in order to determine whether accommodation and financial support can be provided to the family under section 17 Children Act 1989. As steps will also need to be taken to help the mother establish a long-term pathway to resolve her homelessness, it may be more efficient for Children's Services to take ownership of the case before the child is born and more consistent for the mother to be assisted by the same team.

Data Protections Act 2018 and GDPR

The concept of the protection of personal information comes from Article 8 of the [European Convention on Human Rights](#) (ECHR) which states that "everyone has the right to respect for his private and family life, his home and his correspondence".

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MENTAL CAPACITY 2005

At some points there may be the need to consider decision specific assessments about sharing information, contact, sexual relations, Section 11 and Section 42 of the Care Act 2014, and any action that might need to be taken to support and protect.

If modern slavery, there may be concern about a person's capacity to independently decide about whether or not to consent to entering the NRM, steps should be taken to try to support the individual to make the decision. See Chapter 3 of the [Mental Capacity Act Code of Practice](#) for more information.

There is specific guidance on [supporting migrants lacking mental capacity in relation to immigration matters guidance](#), Migrant Organise provides the framework on how to assess

mental capacity in relation to immigration matters. The guidance then sets out the steps statutory services can take if a person does lack mental capacity to make immigration decisions. There is yet to be any case law which provides guidance on what it means to lack mental capacity in relation to immigration matters.

Inherent jurisdiction of the High Court.

What is the inherent jurisdiction?

- The High Court has an inherent jurisdiction to protect vulnerable adults whether or not they lack the relevant decision-making capacity.
- The inherent jurisdiction exists to fill gaps left by the law.

Which adults are vulnerable adults?

- The inherent jurisdiction is available to protect vulnerable adults who, even if they do not lack the relevant capacity, are subject to constraint, coercion or undue influence, or anything else that deprives them of the capacity to make a decision.
- The inherent jurisdiction is a possible route for dealing with cases of adults at risk whose circumstances are not covered by the Mental Capacity Act 2005 (MCA).
- The inherent jurisdiction continues to protect people who lack the relevant capacity if the circumstances of the case fall outside of the MCA (for instance, making a declaration of non-recognition of a marriage).

What to think about before applying for the inherent jurisdiction

- Applying for the inherent jurisdiction can be expensive and slow, and often will not provide a “quick fix”.
- The use of the inherent jurisdiction has serious implications for the individuals concerned and their families and others.
- It will, in particular, engage the person’s right to a private and family life under Article 8 and liberty and security under Article 5 of the ECHR. The court must exercise the jurisdiction in a way that is compatible with the ECHR.
- In general, the inherent jurisdiction should be seen as a last resort when other options (including less restrictive options) are not available or have failed.
- There should always be a commitment to working closely with the person concerned, and adopting a multi-agency approach.