



Background paper - **Local government welfare responses to migrant families who have ‘no recourse to public funds’**

Jonathan Price and Dr Sarah Spencer, Centre on Migration, Policy and Society (COMPAS), University of Oxford

Contents

Aims.....	1
Background.....	1
Literature.....	3
Research Questions.....	4
Methodology.....	5
Ethics	6
Outputs.....	6
References.....	7

Aims

This eighteen-month study is investigating local authority practice in England and Wales relating to the social welfare needs of children and families who, because of their immigration status, have ‘no recourse to public funds’. The aim is to establish an authoritative evidence base on local authority support provision to this group, the implications of differing practice for the wellbeing of vulnerable children and families, and to inform future policy and practice at national and local levels. The research is complemented by a smaller, comparative study, funded by the Open Society Foundations, exploring related issues in two cities in Spain and Germany: Madrid and Berlin.

Background

A core condition under which most people from outside of the European Economic Area (EEA) are allowed to come to the UK is that they will have ‘no recourse to public funds’ (NRPF). This precludes access to non-contributory welfare benefits such as child benefit, housing benefit, income-based job seeker’s allowance, and allocation of public housing, to which their level of need might otherwise make them eligible. It applies, among others, to care leavers and those with caring responsibilities for children. Such migrants usually entered the UK through the labour migration, family or asylum routes. ‘Irregular migrants’

who have exhausted their lawful stay also have NRPF. Similarly, EEA nationals who do not meet their conditions of stay may not be able to access public funds.¹

There are, however, circumstances in which certain forms of welfare support are not precluded. Support under community care and children's legislation may be provided subject to a statutory assessment by local authority professionals. This can establish that a single adult, young person or family is entitled to accommodation, subsistence and/or social care if their level of need falls above thresholds that have been set in the domestic and European courts (relying on the National Assistance Act 1948, Children Act 1989, Mental Health Act 1983 and Human Rights Act 1998 in particular). As a result, families with dependent children, pregnant women, nursing mothers, and former looked-after children, as well as adults with community care or mental health needs, can be found eligible for support. The substantial body of case law² has added to the complexity of the pattern of entitlements and exclusions and reflects the extent to which migrants' entitlements and local authority responsibilities is a contested field.

The limited available evidence suggested there is variation in local authority practice in relation to assessment of need, in whether individuals and families are accepted as entitled to support, and the nature and means of providing it. While some authorities acknowledge this group of service users explicitly in service arrangements, others do not record cases or monitor outcomes (The NRPF Network, 2011). There are no statutory guidelines on what should be provided and no scrutiny by a regulatory body of the adequacy of support levels or the ways in which it is structured and delivered.

Local authorities receive no financial support from central government for accommodation or financial support provided to this group of service users. A local authority survey nevertheless identified 51 authorities financially supporting 6,500 people (2009-10) at a cost of £46.5m. Since 2008 there has been a rise in the number of children and family cases supported and these now outnumber single adult cases (The NRPF Network, 2011). The cost of providing support is related in part to the length of time it takes for the Home Office to

¹ Although EEA nationals may not be able to access public funds, they are not subject to immigration control pursuant to Section 115 (9) Immigration and Asylum Act 1999 and are therefore not subject to the 'no recourse to public funds' rule.

² E.g. *R (ES) v Barking and Dagenham* [2013]; *R (on the application of KA) v Essex County Council* [2013] EWHC; *R (VC) v Newcastle City Council* [2011] EWHC; *(Ruiz Zambrano (European citizenship))* [2011] EUECJ; *ZH (Tanzania) v SSHD* [2011] UKSC; *SL v Westminster City Council & Another* [2011] EWCA; *R (Nassery) v London Borough of Brent* [2011] EWCA; *R (SO) v London Borough of Barking & Dagenham* [2010] EWCA; *R (Mwanza) v London Borough of Greenwich & London Borough of Bromley* [2010] EWHC; *Teixera v Lambeth London Borough Council* [2010] EUECJ; *Birmingham City Council v Clue* [2010] EWCA; *R (M) v Slough Borough Council* [2008] UKHL; *N v Coventry City Council* [2008] EWHC; *R (Gnezele) v Leeds City Council & Another* [2007] EWHC; *Blackburn-Smith v Lambeth London Borough Council* [2007] EWHC; *R (N) v London Borough of Lambeth* [2006] EWHC; *PB v Haringey London Borough Council* [2006] EWHC; *The Queen (on the application of AW) v London Borough of Croydon and The Queen (on the application of A, D, and Y) v London Borough of Hackney & SSHD* [2005] EWHC; *N v Secretary of State for the Home Department* [2005] UKHL; *R (Limbuela) v SSHD* [2004]; *M v London Borough of Islington and another* [2004] EWCA; *R (Kimani) v Lambeth London Borough Council* [2003] EWCA; *R (Westminster City Council) v NASS* [2002] 1 WLR.



resolve the immigration status of individuals and families who remain reliant on local authority support during the immigration application process.

This project comes at a time of flux for local authorities and the voluntary sector, which is likely to have an impact on children and families who have NRPF. Some local authorities have reported that numbers of referrals and supported families who have NRPF are increasing, with the poor economic situation resulting in greater dependency on welfare services. At the same time, austerity measures are putting significant pressure on local authority budgets, legal aid has been cut back, and the localism agenda could lead to greater variation in practice across the UK. Additionally, there is a new strategic focus for the Home Office on migrant families. This is evident in the Home Secretary's concern over implementation of Article 8 Human Rights Act, increasing resources being directed to the family returns process, the implementation in July 2012 of the new family migration rules and a greater focus placed on enforcing removal directions. It is not clear what impact this will have on families whose cases are currently unresolved.

Literature

Although the literature addressing these issues directly is limited, there are a number of broader theoretical debates that will facilitate the framing and contextualisation of the study, by providing an understanding of key issues and discourses, evidence and historical background.

Firstly, the interface between migration and welfare state 'regimes', considering Esping-Anderson's seminal typology of welfare states alongside the work of Sainsbury and others who have studied the varying ways in which migrants are incorporated into different types of welfare state as a result of broader migration policies and the stratification of rights according to immigration status (Sainsbury, 2012, Bommers and Geddes, 2000, Esping-Andersen, 1990, Daly and Lewis, 2000).

Another debate relevant to the study is the relationship between the influence of supranational legal instruments on national migration law and policy on the one hand, and the influence of domestic politics in shaping migration law and policy on the other (Guiradon, 2000, Soysal, 1994). Lipsky, Howe, Evans & Harris and others have studied public bureaucracies and the individuals who work in them. In particular, they debate the degree of discretion 'street-level bureaucrats' have in decision-making, relative to standardised policies designed at managerial levels (Lipsky, 1983, Howe, 1991, Evans and Harris, 2004).

Literature on the lived experiences of migrants and the role of informal social networks in their negotiation of the complex rules and restrictions the system presents will be drawn from the disciplines of sociology and anthropology. These will be useful in providing an understanding of migrants' strategies in meeting needs within the context of service restrictions, the history and composition of migrant communities and how 'migrant networks' provide informal support beyond the reach of state enforcement (Cvajner and Sciortino, 2010, Genova, 2002).

Research Questions

The project is addressing three broad questions:

1. **What are the practices of local authority departments administering Section 17 Children Act 1989 support in relation to assessment and provision of services to children and families with no recourse to public funds?**
 - Has there been any significant change in policy and/or practice in recent years?
 - What are the factors which influence practice and variation in practice between local authorities, such as interpretation of case law, role of the Home Office, cost implications and the attitudes of individual ‘gate keepers’?
 - Who comprise the group of migrants seeking services whose immigration status limits their entitlements to mainstream benefits (‘public funds’)?
 - Does this group of service users present any particular challenges to local authority service providers?
 - What are the factors that impact on the ability of local authorities to progress NRPF cases from temporary Section 17 CA support to more permanent resolution?
 - To what extent are local policies and practices impacted by laws, policies and budgets relating specifically to this group of migrants at the national level?
 - What impact does the nature of the relationship between local authorities, the voluntary and faith sectors, and the Home Office, have on outcomes for service users?
 - What are the other factors that shape policy and practice at the local level? How significant are levels of local autonomy, structure and funding of the welfare state, recent austerity in public expenditure and constraints imposed by the courts, for instance?

2. **What are the experiences of children and families when they engage with local authorities in relation to their service needs and what are the outcomes for them?**
 - What are the factors that lead to families seeking support from local authorities?
 - What welfare needs do they present?
 - What are the experiences of migrants during the assessment process and whilst receiving services from the local authority?
 - What impact does the way in which Section 17 CA services are arranged have on migrant families seeking or receiving support?
 - What strategies are employed by migrants and their advocates to negotiate restrictions and facilitate access to local authority support?
 - For those who have or have not received local authority support, what have the implications been?
 - What alternative support arrangements are available to migrant families who cannot access Section 17 CA services?

3. **What implications do the findings have for future policy and practice at the national and local levels?**
 - What are the implications for a future research agenda?

Methodology

1. **A literature review** of the limited existing literature on the experiences of migrants and service providers in relation to NRPF, situated within broader contextual debates.
2. **Mapping of the law and policy relating to migrants subject to the NRPF condition.** Policy papers, practice guidance, legislation and case law is being used to map national policy.
3. **Statistical mapping of families subject to the NRPF rule:** To the extent that is possible, calculating the stock of people in the UK potentially subject to the NRPF rule.
4. **Two workshops** in London and Manchester to consult a broad range of stakeholders on the research method and research questions.
5. **A survey of the 174 local authorities with social services responsibilities in England and Wales,** designed to maximise response rates by asking for information limited to numbers of supported family cases and details of service arrangements. A second, more detailed survey is to be undertaken with a sample of these local authorities using a cluster sampling method. In order to encourage a good rate of return, it is being made clear that although it is an independent university study, it will be endorsed by the NRPF Network and the Association of Directors of Children's Services (ADCS), indicating the value of the findings to both networks and their local authority members. If necessary, Freedom of Information (FOI) requests are being made for data held by local authorities.
6. **An electronic survey of voluntary sector service providers,** covering a cross section of agencies including refuges, homelessness charities, and migrant organisations, for evidence on the needs and experiences of the NRPF group of service users and the agencies' own experiences in relation to local authority providers. The survey is limited to organisations providing front-line services to families with NRPF.
7. **Semi-structured interviews with local authority professionals in eight case study areas** chosen to reflect differing practices and differing service user profiles, including the number of supported service users. In each local authority area, three interviews will be conducted (24 interviews in total) to explore practices in that area, factors leading to the approach taken, their relationship with the Home Office, knowledge of the NRPF group of service users and outcomes of their approach. Professionals at different levels of seniority will be interviewed: front-line social workers, team managers and service managers or legal services professionals.
8. **Semi-structured interviews with two representatives of advice agencies and voluntary and community organisations in each of the eight areas** (16 in total) to explore issues raised by the survey. The interviews will explore the experiences of their migrant service users and how voluntary sector advocates negotiate with statutory providers to achieve outcomes for them. They will also aim to identify what barriers are faced by advocates and how they seek to overcome them.

9. **Semi-structured interviews with five migrants in each of the eight areas** who have personal experience of attempting to secure local authority services (40 in total). A purposive sample will be accessed through local authorities, voluntary organisations and snowballing. These interviews will explore the experiences of children and families when they have engaged with local authorities in relation to their service needs and what the outcomes were for them. They will explore what welfare needs they presented with and whether they felt the response from the statutory authorities met those needs. Interviews will be conducted with migrants who were accepted for support and those who were not successful, to explore how their experiences differed, and whether this reflects national policy and legal guidance on assessments for the NRPF group of service users. Interviews will be conducted with the assistance of interpreters, where appropriate.
10. **Semi-structured interviews with Home Office officials**, four at a senior policy level to explore central government policy relating to the group of service users supported by local authorities, and four with caseworkers dealing directly with the immigration cases of those on local authority support.
11. **Two workshops** in London and Manchester to present emerging findings to a broad range of stakeholders and secure feedback before preparation of the final report.

Ethics

All Oxford University research projects which involve human participants are subject to review by an ethics committee to ensure that the research is conducted in a way that respects the dignity, rights and welfare of participants and minimises risk to all parties.

Outputs

A final summary report in hard copy will be published with policy and practice recommendations. The full report and executive summary will be accessible electronically in PDF format from the project webpage on the COMPAS website.

A separate two-side briefing will be published for participants at a COMPAS Breakfast Briefing (a monthly series held in London for research users with policy interests).

A 'Policy Primer' will be published on the Migration Observatory website (migrationobservatory.ox.ac.uk) on migrants subject to the NRPF rule.

Separate articles will be submitted to academic journals.

References

- BOMMES, M. & GEDDES, A. (eds.) 2000. *Immigration and Welfare: Challenging the Borders of the Welfare State*.
- CVAJNER, M. & SCIORTINO, G. 2010. A tale of networks and policies: prolegomena to an analysis of irregular migration careers and their developmental paths. *Population, Space and Place*, 16, 213–225.
- DALY, M. & LEWIS, J. 2000. The concept of social care and the analysis of contemporary welfare states. *The British Journal of Sociology*, 51, 281-298.
- ESPING-ANDERSEN, G. 1990. *The Three Worlds of Welfare Capitalism*, Cambridge, Polity Press.
- EVANS, T. & HARRIS, J. 2004. Street-Level Bureaucracy, Social Work and the (Exaggerated) Death of Discretion. *British Journal of Social Work*, 34, 871-895.
- GENOVA, N. D. 2002. Migrant 'illegality' and deportability in everyday life. *Annual Review of Anthropology*, 31, 419-447.
- GUIRADON, V. 2000. The Marshallian Triptych Reordered: the Role of Courts and Bureaucracies in Furthering Migrants' Social Rights. In: BOMMES, M. & GEDDES, A. (eds.) *Immigration and Welfare: Challenging the Borders of the Welfare State*.
- HOWE, D. 1991. Knowledge, power and the shape of social work practice. In: DAVIES, M. (ed.) *The Sociology of Social Work*. London: Routledge.
- LIPSKY, M. 1983. *Street-level bureaucracy: dilemmas of the individual in public services* New York, Russell Sage Foundation
- SAINSBURY, D. 2012. *Welfare States and Immigrant Rights: the Politics of Inclusion and Exclusion*.
- SOYSAL, Y. 1994. *Limits of citizenship : migrants and postnational membership in Europe*, Chicago, University of Chicago Press.
- THE NRPf NETWORK 2011. *Social Services Support to People with NRPf: a National Picture*.