

# Housing, Homelessness and Fair Work Committee

10.00am, Thursday, 3 September 2020

## No Recourse to Public Funds – Legal Position

Executive/routine  
Wards  
Council Commitments

### 1. Recommendations

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- 1.1 To note the current legal position on people who are homeless with no recourse to public funds (NRPF).
- 1.2 To agree that the Council will continue to provide support to people who potentially have NRPF until the end of the current public health crisis.
- 1.3 To reconsider the Council's longer term position in light of the legal advice provided within this report.
- 1.4 To agree that officers will develop proposals for managing cases for those with NRPF and provide a report to the Housing, Homelessness and Fair Work Committee within one cycle.
- 1.5 To note that the Scottish Government and partners continue to engage with the UK Government around potential changes to legislation and resource provision for those with NRPF.

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## NRPF – Legal Position

### 2. Executive Summary

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- 2.1 During the Covid-19 pandemic the Council, to support public health objectives, accommodated around 50 people, who at that point were believed to have NRPF. Under normal circumstances accommodation would not have been provided. A number of these service users are still likely to be in accommodation at the end of the public health crisis. This report confirms the legal position in relation to the provision of services to those with NRPF.

### 3. Background

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- 3.1 Since the beginning of lockdown restrictions, the Council has been required to secure additional temporary accommodation to meet public health objectives and manage a lack of throughput into all forms of settled accommodation, in order to fulfil its statutory duties to homeless people. This included accommodating around 50 people with NRPF.
- 3.2 On 9 July 2020, the Policy and Sustainability Committee considered a report on the provision of temporary accommodation since lockdown restrictions were put in place. This report included an update on the number of people with NRPF who had been accommodated and put forward three options for progressing their cases when the public health crisis ended.
- 3.3 These options were:
- (i) Continue to accommodate NRPF service users indefinitely;
  - (ii) provide accommodation for an extended period e.g. 90 days to allow advocacy and support to progress the case; or
  - (iii) immediately withdraw accommodation.
- 3.4 Some members of the Committee wished to remove the option to withdraw accommodation immediately, before any decisions were made on the level of support the Council would continue to provide.
- 3.5 Prior to any decision being made, officers were instructed to provide a report on the legal position in relation to the provision of services to those with NRPF.

## 4. Main report

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- 4.1 Paragraph 6 of the UK Government's Immigration Rules includes housing in its definition of "Public Funds".
- 4.2 In normal circumstances, where a service user has NRPF, they could not be allocated a local authority tenancy, or temporary accommodation.
- 4.3 The Council has accommodated people believed to have NRPF during the pandemic. Continuing to provide such accommodation post-pandemic would likely be deemed to be illegal and may prejudice a service user's immigration application and future status.
- 4.4 In certain circumstances, individuals with NRPF can access social work services. In terms of the Social Work (Scotland) Act 1968, applicants would be entitled to provision of temporary accommodation, only where necessary to avoid a breach of human rights.
- 4.5 However, the case of *R. (Adam, Limbuela and Tesema) v Secretary of State for Home Department* (2005 UKHL 66) established that, where an individual has failed to obtain asylum seeker status, it is not necessary to provide assistance to prevent a breach of human rights if this could be achieved by the person returning home.
- 4.6 The Social Work (Scotland) Act 1968 states that there is no entitlement to temporary accommodation solely to avoid destitution.
- 4.7 The Children (Scotland) Act 1995 states that in terms of children's needs there may be a requirement to provide temporary accommodation to both parent and children. This is a decision for Children's Services to make, taking into account the individual circumstances of each case to determine eligibility and funding, as well as the likely adverse impact on the child of not providing accommodation.
- 4.8 None of the present cases where accommodation has been provided during the pandemic includes children.
- 4.9 Frontline staff will be required to make decisions on the continued provision of accommodation for cases where people have NRPF. In light of recent fatalities in Glasgow, the Council should continue to risk assess staff, accommodation and those being accommodated. The Council may be vicariously liable should a staff member act unlawfully by continuing to provide accommodation to those with NRPF.
- 4.10 It is likely that most, if not all, local authorities will act in accordance with the legislation, meaning that they would not, under normal circumstances, provide accommodation to those who have NRPF.
- 4.11 If the Council chooses to take a different approach by undertaking to provide accommodation over and above existing statutory duties, it is possible that people assessed as having NRPF in Scotland and possibly the rest of the UK could present in Edinburgh.

- 4.12 Support and advocacy providers working with people with NRPF would become aware of this and would likely advise their clients to present in Edinburgh, leading to increased pressure on already stretched statutory services.
- 4.13 Should the Council choose to provide accommodation indefinitely to those with NRPF, who were accommodated during the pandemic, there is both a legal and financial risk to the Council.
- 4.14 Agreeing to accommodate households who have NRPF indefinitely is likely to cost in the region £22,630 per case per annum, with no Housing Benefit eligibility, and options for securing alternative accommodation would be limited, leading to longer stays in temporary accommodation.
- 4.15 Should the Council, post-pandemic and without a change in policy from the UK Government, continue to accommodate those with NRPF but refuse new presentations, a two-tier system may be created, which will be exposed to the risk of judicial review. A legal challenge of this nature would carry considerable associated financial and reputational risks.
- 4.16 The Scottish Government has written to the UK Government around existing resource provision and the ability to provide support for people who have NRPF. To date there has been no change in legislation.
- 4.17 The Scottish Government is seeking to work with partners across the sector to look at a collaborative response to ensuring that services continue to be provided to those with NRPF who face destitution.

## **5. Next Steps**

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- 5.1 The Council and its partners will continue to provide accommodation and support to those who potentially have NRPF until the public health crisis is over, in the interests of wider public health advice as supported by the Scottish Government.
- 5.2 Officers will continue to liaise with both public health colleagues and civil servants to establish a timeline for the end of the period by which all NRPF cases required to be accommodated to meet public health objectives.
- 5.3 Officers will continue to provide feedback to civil servants to inform their thinking around future provision of services to those with NRPF and to encourage the Scottish Government to provide clear national guidance on future delivery of services in this area.
- 5.4 The Scottish Government have set up a working group with partners, including third sector and local authority officers, to develop proposals for the continued provision of services to those with NRPF. The first meeting took place on 19 August 2020.

## **6. Financial impact**

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- 6.1 The average cost of providing temporary accommodation for a household with NRPF in Bed and Breakfast or a Shared House is £62 per night, with no Housing Benefit eligibility. The cost for 90 days is £5,580 and a full year would cost £22,630 per household. To accommodate 50 households with NRPF for 90 days, it would cost £0.279m and a full year would cost £1.132m.
- 6.2 In addition to accommodation costs, as these households are not entitled to any benefits, the Council would require to provide a subsistence payment to cover daily expenses including food; this is approximately £55 per week (depending on the size and needs of the household) which would cost an additional £0.035m for 90 days and £0.143m in a full year. In addition to accommodation and subsistence costs there may also be the need to provide support from other existing services, primarily from the Health and Social Care Partnership, in the form of; mental health, addictions or general health care needs. This inevitably places an additional demand on the support services within the city.

## **7. Stakeholder/Community Impact**

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- 7.1 N/A

## **8. Background reading/external references**

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- 8.1 [UK Government Immigration Rules](#)
- 8.2 [Children \(Scotland\) Act 1995](#)
- 8.3 [Social Work \(Scotland\) Act 1968](#)
- 8.4 [Decision, R. \(Adam and Limbuela\) v. Secretary of State for the Home Department 2005 UK House of Lords 66](#)

## **9. Appendices**

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- 9.1 None.