

Loophole Nation

The legal hacks giving migrants
early access to benefits

Caroline Elsom

ONWARD >

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Executive summary



Britain's immigration system is meant to make sure that migrants coming here are self-sufficient. In theory, this happens through salary thresholds, sponsorship agreements or proof of living costs. However, a series of loopholes provide a path to settlement that can be fully funded by the state, with access to Universal Credit, disability benefits, social housing lists and more. All of this is possible *before* Indefinite Leave to Remain has been granted. While public and political attention is focussed on support for asylum seekers, this alternative legal route to access public funds is continuing largely without scrutiny.

The funnel towards early unfettered access to benefits goes as follows: arrive illegally or on a temporary visa, maintain or establish family or community ties, move to a visa route with human rights protections, meet tenuous Home Office hardship criteria, and then claim benefits. The results can be seen in visa condition patterns. Nigerian migrants have almost double the number of applications for “Change of Conditions” to remove a “no recourse to public funds” visa condition than any other nationality since recording began.

While there may be factors that exacerbate financial difficulties for some migrants, to have such a consistent outlier raises systemic questions. Central to the issue is the European Convention on Human Rights, as applied to UK law by Labour’s Human Rights Act 1998 and interpreted by the courts. At every stage, Articles 3 and 8 provide protection from deportation, work requirements, visa fees and NHS charges, while allowing a gateway to eligibility for welfare.

Recent legal rulings have only served to widen the scope for abuse by eroding evidential thresholds and requiring Home Office caseworkers to take a proactive approach to destitution avoidance. The Labour Government has signalled their intention to crack down on abuse of some routes, but they will fail to meet their ambition by tinkering with the status quo. Only withdrawal from the ECHR or change in how it applies will fix this.

There will always be complex and compassionate cases in which a degree of discretion may be appropriate, but there are alternative ways of providing support that do not create perverse incentives. There is also an alarming lack of data to understand the true scale of the problem and the potential for gaming. A new visa casework system that is in progress will help close this gap, albeit too slowly without fully published information yet. Restoring public confidence in the integrity of the immigration system requires full transparency about its foibles – and action to close the loopholes.

Introduction

Most temporary visa applications require proof of financial means alongside a condition of “no recourse to public funds” (NRPF), barring access to most benefits. This is designed to ensure that those coming here for any length of time have the requisite funds to cover their costs without falling into destitution. However, it is possible to apply for this condition to be changed by providing evidence of destitution, unmet child welfare needs or in other exceptional financial circumstances.

If successful, this opens the door to the full suite of British state support, including Universal Credit, Personal Independence Payment, Child Benefit, Pension Credit, social housing eligibility and more. It creates an effective loophole for some visa routes whereby having sufficient financial means either does not apply at all or only applies at the point of visa issuance but can otherwise be relaxed.

While the Labour Government’s attention is focused on the small boats crisis, legal visa routes - backed by ECHR protections - are continuing to create perverse financial incentives for migrants and left wide open to abuse. Their Immigration White Paper signals an intention to tighten family migration policy by the end of the year, but with little detail on how it will close the multitude of loopholes while remaining signatories to the ECHR.

This paper reveals the ways to gain recourse to public funds while still only having Limited Leave to Remain. It considers how visa conditions can be changed and therefore which routes can effectively have no financial or work requirements. It then breaks down the nationalities of migrants that are gaining access to public funds via these routes and the welfare they are able to claim.

Visa routes with no recourse to public funds

The Home Office does not currently record the number or type of visas that are issued with an NRPF condition. However, it is possible to estimate those with temporary visas that would have NRPF applied by default. At the end of 2024, around 3.6 million people held visas that would usually have a NRPF condition.¹ Prior to 2020, this figure stood consistently at under 1.5 million for the last decade.²

There are a range of financial requirements for these visas, from means just to support the stay for visitors, £29,000 for a five-year family route and up to £41,700 for certain skilled worker visas.³ While most of these visa types are unlikely to get an NRPF condition changed under any circumstances, it is relevant to consider their volumes in the context of those who may then convert to another type of leave once here in order to gain access to public funds.

A much-delayed new system, Atlas, is being rolled out by the Home Office which will collect and publish information on NRPF in the future, but this is still a work in progress despite the latest published deadline for commencement being April 2025.⁴ The total cohort of those with NRPF also includes those here illegally, whether due to never having had valid status or overstaying a valid visa, who will not be captured by the new system.

The Home Office has discretion to grant access to public funds to those who would ordinarily have NRPF applied from the outset – but again, there is no data on how often this happens. The NRPF condition can also be lifted once a person is here to allow access to public funds when a person applies for a “Change of Conditions”. Change of Conditions are available for the following routes:

- Family Life 10-year route for partners and parents
- Private Life route for those with seven or more years of residence
- Child relative joining a sponsor with humanitarian protection or refugee status
- Hong Kong British National (Overseas)

The first three of these four routes exist due to Section 6 of the Human Rights Act 1998 which makes it unlawful for a public authority to act in a way which is incompatible with the ECHR, as interpreted by the courts. Article 8 of the ECHR sets out “the right to respect for his private and family life.” The special protection afforded to family life and private life routes means that, in addition to seeking asylum, they are often the only avenues to remaining in the UK left open to those who may have committed immigration offences, such as overstaying a visitor visa.

While Section 117B of the Nationality, Immigration and Asylum Act 2002, as amended by the Immigration Act 2014, states that “little weight” should be given to private life or relationships established when a person was in the UK illegally

or with precarious status, these factors are not disbarring. This area is likely to be the focus of Labour's new policy on "exceptional circumstances", as set out in their white paper in May 2025, with details due by the end of the year.⁵ However, there is no indication that this part of their policy will include consideration of the migrant's ability to support their family without relying on the taxpayer, with changes to these requirements only applying to other family migration routes.

Child relatives joining a sponsor with humanitarian protection or refugee status are further supported by the Refugee Convention administered by the United Nations, but Article 8 ECHR remains the backstop when refusal could be seen to disproportionately interfere with family life. As their adult sponsors have recourse to public funds, this cohort will not be considered in detail. British National (Overseas) visas available to migrants from Hong Kong account for only a very small number of Change of Conditions, as discussed further in the section on nationality.

The Home Office has discretion to remove NRPF from other leave types, including those on skilled worker or student visas, but this is riskier for the applicant. If an application for a Change of Conditions is refused, the Home Office will consider whether the applicant continues to meet the requirements of the route for which permission was originally granted. So, for these visa types, the financial thresholds that originally applied may be re-tested.

Change of Conditions and destitution

To get a Change of Conditions, applicants establish that they have compelling circumstances for requiring assistance from the state. These are set out in Section 95 of the Immigration and Asylum Act 1999, requiring one of the following:

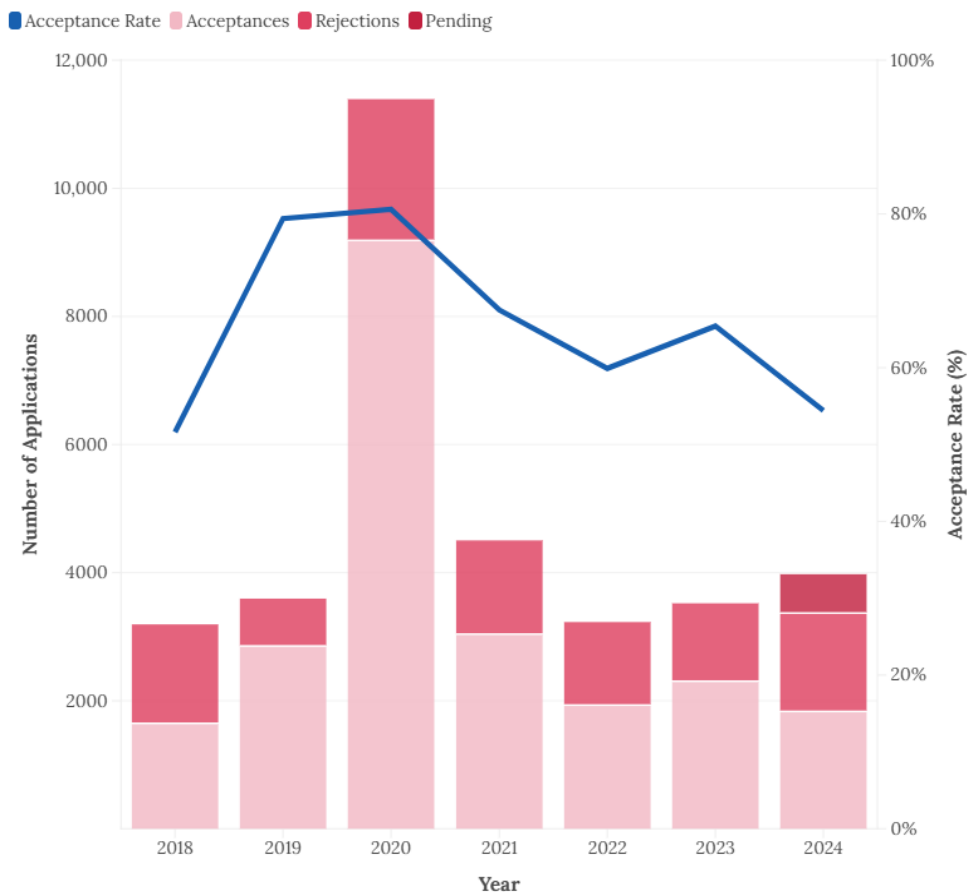
- The applicant is destitute, meaning that either: they do not have adequate accommodation or any means of obtaining it; or, they have adequate accommodation but cannot meet other essential living needs.
- The applicant is at risk of imminent destitution, meaning they are unlikely to continue to meet their accommodation and living costs after three months.

- There are reasons relating to the welfare of a relevant child which outweigh the considerations for imposing or maintaining the condition.
- The applicant is facing exceptional circumstances affecting their income or expenditure.

Figure 1 shows that applications for Change of Conditions due to destitution have averaged almost 4,600 per year, with an average acceptance rate of 65%, but with a huge spike at the start of the Covid-19 pandemic in 2020.⁶ It demonstrates that a temporary event - a global pandemic - provided a gateway to benefits that may have lasted beyond other temporary pandemic financial assistance.

Figure 1 – Destitution Change of Conditions applications and outcomes

Source: Home Office, Onward analysis⁷



Here again, the ECHR is central to the basis for providing relief, both under Article 8 as above, and also Article 3 which prohibits inhuman or degrading treatment, which covers the suffering that could be caused by destitution. Evidence to prove destitution can include a wide range of documentation but typically includes the last six months of bank statements, household bills and supporting documents from schools or GPs. The destitution test is based solely on the adequacy of their means *in the UK*, not whether they could sufficiently sustain themselves in their home country where the cost of living is likely to be much lower.

A recent legal case relying on Article 3 ECHR has further strengthened the ability to apply for a Change of Conditions or not have NRPF applied at all due to the risk of destitution rather than current destitution. *SAG & Ors v Secretary of State for the Home Department* in 2024 ruled against adopting a “wait and see” approach to processing a Change of Conditions.⁸ This means that access to public funds can be granted based on a hypothetical future scenario rather than a realised crisis. It emphasises expediency over evidence, effectively meaning that waiting times for Change of Conditions are sufficiently long that if procuring formal records could cause harmful delays in support, self-certification and third-party corroboration can be proof enough.

The potential significance of this judgement should not be underestimated. It explicitly emphasised that it was not relevant whether applicants had previously managed to avoid destitution by drawing on third party support, even if the support was still available in a conditional or time-limited way. The intention to withdraw support validated the risk of destitution, rather than documentation of the applicant's actual financial means. This reinforces Home Office caseworker guidance that there is only a general expectation for a migrant to support themselves and their family while here, but lack of action to improve their financial circumstances cannot justify refusing access to public funds.⁹

The two non-destitution related grounds for a Change of Conditions can also be used to gain access to public funds for reasons that fall short of destitution. Again, recent litigation has altered the circumstances in which these tests can be met. With regard to welfare of the child, caseworkers now need to consider whether maintaining NRPF is in the best interests of the child versus if they had access to public funds.¹⁰ This fundamentally shifts the balance away from

proven hardship in favour of awarding eligibility for the full suite of family benefits just because it would make them better off.

Facing “exceptional circumstances” affecting income or expenditure usually applies to families with disabilities, but does not have to relate to being destitute or even on a “very low income.”¹¹ The latest guidance states that caseworkers “must consider applying evidential flexibility” which can include not having to provide financial records at all.¹² Together, the creeping evolution of circumstances that allow NRPF to be disapplied has contributed to a system that may well assist those in genuinely desperate situations, but is open to abuse.

Visa renewal embedding recourse to public funds

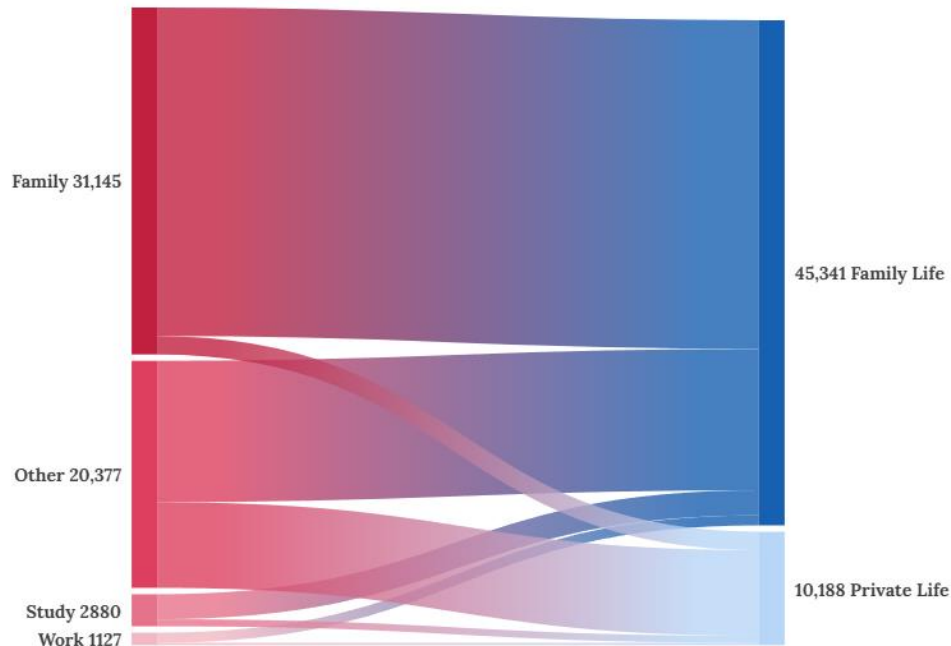
It is possible to retain access to public funds when renewing a temporary visa, which for the family and private life routes is usually every two and half years. In 2024, the family life 10-year route accounted for over half of all extensions being granted for family reasons.¹³ There is no requirement or expectation that an applicant will have materially improved their circumstances during the time even if they have been in receipt of public funds. They simply need to tick a box and resubmit evidence that they would still be destitute were it not for the benefits they now receive to continue recourse to public funds from the start of their renewed visa.

This does not count as a new Change of Conditions but just removes NRPF as a visa condition from the outset of the renewed visa. In this way, Change of Conditions have a cumulative impact on visas that would usually have NRPF. No data is published on the breakdown of the leave types to which Change of Conditions are applied or when in a visas’ duration it has been granted.

Figure 2 shows the previous visa types that migrants held before entering the 10-year family life or private life routes in 2023, with the largest cohort extending into these routes from previous family visas.¹⁴ Up to June 2022 during the Covid-19 pandemic, visa holders could apply for exceptional assurance to receive an automatic extension if they could not complete a formal application due to being unable to attend appointments or access documents. These typically only lasted between one to three months at a time but could be used multiple times and effectively temporarily removed the need to meet salary thresholds.

Figure 2 – Visa extensions into 10-year family life or private life routes in 2023

Source: Home Office, Onward analysis¹⁵



Since 2021, the Home Office has only published previous categories of leave on family routes as a group, making it impossible to tell what proportion of those receiving an extension in the 10-year family life route in 2023 were renewing within this route rather than transferring from the five-year family route due to newly failing to meet the salary threshold. There are no statistics yet that show the impact of the increase in salary threshold for the five-year route from £18,600 to £29,000 in April 2024.¹⁶ The Migration Advisory Committee recently recommended that the Labour Government does implement the further planned increase to £38,700 that was planned by the Conservatives, which would have harmonised this threshold with that for Skilled Workers.¹⁷

There is also a significant “Other” category that includes over 4,100 transferring from visitor visas. After accounting for small numbers for small numbers transferring from Discretionary Leave or other legal routes, this leaves over three quarters of this category who do not have a previous valid leave type recorded, such as those who entered these routes from failed asylum seeking or overstaying. This means they may never have met any form of financial

threshold to enter the UK in the first place or have had any intention to work. In addition, it indicates that the domestic provisions to apply “little weight” to time establishing a private or family life while here either illegally or with precarious status are not working as intended.

Visa and NHS fee waivers

Many of those who campaign against the NRPF condition point to the high fees that migrants are charged, including for visas themselves, the Immigration Health Surcharge and other costs to prepare their application, like legal advice, biometric tests and document copying. For example, applying for permission to remain four times on the family life 10-year route would cost £1,321 per person each time, as shown in Figure 3.¹⁸

The Immigration Health Surcharge (IHS), designed to cover potential costs to the NHS and deter health tourism, has recently been drastically increased from £624 per year to £1,035 for adults from February 2024 onwards.¹⁹ This means that adults on the 10-year family life route will have to pay £10,350 over the course of the route, with a discounted rate for children.

To gain settled status at the end of the 10 years, there is a one-off charge of £3,029 per applicant, which again can be waived. Some may be able to curtail their time on the 10-year route before spending the full decade on that route if they have held another valid leave type prior to switching routes by qualifying for Indefinite Leave to Remain under long residence rules instead.

Figure 3 – Fees over the course of the 10-year family life route

Source: Home Office²⁰

	Adult	Child
Limited leave to remain	£5,284	£5,284
Immigration health surcharge	£10,350	£7,760
Indefinite leave to remain	£3,029	£3,029

Though these fees are high, there are again waivers available in order to be compatible with the ECHR.²¹ These can apply to both the application for permission to remain and the IHS or just one. The bar for receiving a waiver is not even as stringent as the destitution criteria used for a Change of Conditions. It is a simpler test of affordability at the particular point at which they are required to pay the fee. According to the Impact Assessment published when IHS fees were increased in 2024, the central estimate of the proportion of fees that would be waived was over half, up from just over a third before the increase.²² Hence, many of those who will have NRPF on the family life or private life routes will be able to draw on public funds via the NHS for free.

Voluntary returns assistance

Support for migrants to return home is available to those who withdraw their application to stay in the UK, including those on the 10-year family or private life routes. The Voluntary Returns Service is able to buy the plane ticket, get a one-way travel document (if no valid passport is held) and pay for medical escort to fly with the returnee if needed.²³

On top of this, those returning to a developing country can receive up to £3,000 to support their reintegration under a range of circumstances, such as departing as a family.²⁴ This is designed to be used to meet immediate needs on arrival, to find somewhere to live, support education, find a job or start a business. The financial checks to access this assistance are much less stringent than those for proving destitution and there is no requirement to account for items that could be sold immediately prior to departure.

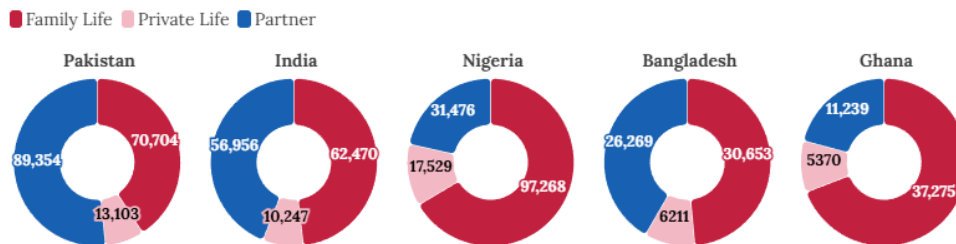
Nationality of migrants

Given the lack of published data about those with NRPF, comparisons of the relative size of different nationalities gaining access to public funds are limited. However, it is possible to look at use of the family and private life routes versus those meeting financial requirements via the five-year family route. Indian, Nigerian and Pakistani nationals are the largest nationality groups granted family life 10-year route extensions of stay, and these three nationalities accounted for 45% of all extensions of this type in 2024.²⁵

Analysis by Migration Observatory compared the annual average of in-country grants of leave in the family life and private life routes versus the five-year partner route, by nationality.²⁶ As shown in Figure 4, updating this analysis with the latest available data, it shows that Nigerians and Ghanaians are overrepresented in the 10-year route compared to the five year partner route since 2010. This indicates that those seeking to remain here for family reasons from these two nationalities are disproportionately more likely to fail to meet the income threshold necessary for the five-year partner route than the other top nationalities on family routes.

Figure 4 – In-country grants of leave by selected visa routes and top five nationalities, 2010–2024

Source: Home Office, Onward analysis²⁷



Likewise, breakdowns for those applying for and receiving a Change of Conditions due to destitution are also published by nationality. Since recording of Change of Conditions data started in mid-2017, Nigerians have submitted almost double the number of applications due to destitution than any other nationality, followed by Pakistanis, Ghanaians, Bangladeshis and Indians. Accepted application numbers for these countries are shown in Figure 5, with Nigerians remaining outliers.²⁸

While all these nationalities experienced a large peak in accepted Change of Conditions in 2020, all five were consistently higher across the period. Jamaicans, Albanians, Sri Lankans, Iraqis and Afghans were the next highest nationalities for successful applications. British National (Overseas) from Hong Kong accounted for under 50 applications for Change of Conditions, of which just 17 have been accepted. It is difficult to ascertain the factors driving the high numbers of applications from certain countries compared to others and all the top countries for applications have similar rates of acceptance compared to the average.

Figure 5 – Destitution Change of Conditions by top 10 nationalities for accepted applications

Source: Home Office, Onward analysis²⁹



Explanations for application rates can be separated into two general categories: either these nationalities are more likely to face hardship, or better understand how Change of Conditions can be obtained. All these nationalities tend to be well-networked in the UK, with strong links to community-based organisations, which may help in sharing information about how to access support. Strong family obligations may mean that significant proportions of their income are sent back as remittances, increasing hardship in the UK (although this should be declared in evidence provided for a Change of Conditions application).

High numbers of migrants from all of these countries have taken up Health and Social Care Worker visas since it opened in 2020 and expanded in 2022.³⁰ Work in this sector is among the least secure, with approximately 32% of care workers and 46% of registered nurses in domiciliary care operating on zero-hours contracts.³¹ However, this route has not been open for long enough or with consistent conditions to show a connection – and it would not explain the high rates of Change of Conditions already there before the pandemic. However, the effect of these routes may yet be seen in future transfers to family life and private life routes.

Welfare with or without recourse to public funds

The perception that the system is being gamed to gain illegitimate access to benefits is fuelling negative views of immigration as a whole. An Ipsos poll carried out in May 2025 found that two thirds of Britons think that the number of people coming to the UK is too high.³² Among those who held that view, the top reason given for what had contributed to this the most was the availability of welfare benefits.

While some of this is likely more directly connected to the salience of hotel accommodation for those claiming asylum (although immediate support is not delivered via mainstream welfare), the sentiment applies to wider net migration too. A separate Ipsos poll in April 2025 found that 57% thought that the number of people coming to the UK to live with family was too high, and 41% thought the number coming here to work was too high.³³

Recourse to national public funds

Having a visa condition of NRPF does not mean that there is no way to access any public funds at all. As mentioned above, it is possible for migrants to receive care from the NHS without paying the IHS. There are blanket entitlements to a range of employee benefits like statutory maternity pay and sick pay that fall outside of an NRPF condition. Since 2020, families with children in England who fall under the usual maximum income thresholds have been eligible for Free School Meals, regardless of NRPF conditions.³⁴ These entitlements are all conferred separately from the NRPF framework, despite the significant cost to taxpayers.

The downstream impact of NRPF being disapplied are part of the newly published statistics on Universal Credit by immigration status.³⁵ Almost 75,000 people with Limited Leave to Remain, excluding those on the EU Settlement Scheme but including family reunion visas, were on Universal Credit in May 2025. Around two thirds of these claimants were not in employment. These figures will be skewed by those here on family reunion visas as they have recourse to public funds by default, but there is no breakdown yet that splits out these categories. According to an analysis of the Labour Force Survey by Migration Observatory, an estimated 10% working-age non-EU citizens who arrived in the five years to 2021 reported receiving at least one kind of benefit.³⁶

Tentative indicators of the effect may be seen in the number of those recently arriving in the UK gaining access to social housing. There were almost 66,000 households in social housing in England and Wales that had arrived in the UK less than five years prior to the 2021 Census.³⁷ This will include those gaining access via refugee status, resettlement schemes and the five-year family route, but also those who may have had a Change of Conditions.

Local authorities often have long waiting lists and can impose local connection tests typically between two and five years. Recent legal cases have resulted in councils having to ensure that they do not apply rigid or excessively long rules that effectively bar recent migrants from access and discretion or exemptions must be built into these policies to avoid unlawful discrimination.³⁸

Applicants would have to demonstrate high levels of need to meet the criteria for housing within this timeframe - many of which are similar to the criteria for making destitution, child welfare or exceptional circumstance cases. However, once a social tenancy is secured, it can be a home for life - even if an NRPF condition is subsequently re-applied. 78% of new social lettings in 2023/24 were lifetime tenancies, with some councils explicitly abolishing new fixed term tenancies altogether.³⁹

Local authority assistance

The Home Office actively encourages (but does not require) those with NRPF to seek out support via other avenues, in particular from local authorities, before applying for a Change of Conditions. There is no statutory duty on local authorities to collect data on migrants with NRPF approaching them for support. Local authorities have specific duties under the Children Act 1989 and the Care Act 2014 to provide assistance to children or those with care needs that apply irrespective of immigration conditions. Despite the former predating the Human Rights Act 1998 applying the ECHR to UK law, case law relating to Articles 3 and 8 have shaped how these duties are interpreted.

The NRPF Network publishes data it collects from the councils that subscribe to its NRPF Connect tool, which gives some insight into the scale of local welfare. In total, in 2023/24, £81.8 million was spent by the 85 councils subscribed to its platform, although not all provided complete financial data.⁴⁰ For example, families with children were supported for an average of two and a half years with an average of over £25,000 each per year. Many of the households

supported were those with no status or those seeking asylum, or those with limited leave to remain that had recourse to public funds (via NRPF not being applied or through a Change of Conditions). As the data is incomplete and not geographically representative, it is not possible to assess the amount specifically received by those just on the family life or private life routes.

Recommendations

- 1. Urgently complete the Atlas system rollout and publish detailed NRPF data.** Completion of the rollout of the Home Office's new Atlas system for visas and immigration is years overdue. Without detailed data in the public domain on how many of which visa types have NRPF, it is difficult to quantify the scale of potential unmet need or abuse. It is vital that this data is able to be cross-referenced to more granular information on Change of Conditions, Universal Credit and other benefits by visa type and nationality.
- 2. Repeal Labour's Human Rights Act 1998 and withdraw from the ECHR.** Articles 3 and 8 of the ECHR underpin the visa routes from which NRPF can be lifted, the basis for destitution claims and ability to waive visa-related fees. Creeping judicial activism is gradually widening the circumstances in which those who should have NRPF are able to access benefits, with little that can be done in domestic law to restrain this. The only options to make changes in these areas are to repeal or amend the Human Rights Act 1998 in tandem with radical reform of the ECHR (which is unlikely to be achievable) or for the UK to withdraw entirely. This could also end some of the obvious abuse of the asylum system.
- 3. Prepare the UK legal framework to close the loopholes.** The public rightly expect that those arriving should sustain themselves for the duration of the period until they are formally settled, or leave if they cannot. Outside the ECHR, the 10-year family life route, private life route, Change of Conditions and fee waivers should all be phased out. Discretionary support in truly exceptional and well-evidenced cases should be provided by local authorities, without granting full access to the benefits system.

Conclusion

The hardship experienced by those facing destitution may cause real, lasting harm, but granting migrants unconditional access to the totality of the British benefits system before settled status cannot continue. Incentivising migrants to reach a seemingly imminent crisis point in order to unlock a lifetime on benefits, is neither a rational nor compassionate way to design policy.

Rewarding remaining here at taxpayers' expense is even more perverse when considering that the cost of living in their home country is likely much lower, in addition to the returns package they could receive when voluntarily departing.

Under the protection of the ECHR, allowing access to benefits for migrants who may have already broken the law by overstaying their visas violates the most basic principles of the social contract. All the while, generous voluntary return packages are available to help avoid a life of destitution back in their home country. And of course, for those genuinely unable to return, there is asylum, which is also in dire need of reform. Full transparency on the extent of abuse and withdrawal from the ECHR can begin the repair of both these broken systems.

Endnotes



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