

## **Local Government and Communities Committee**

### **No Recourse to Public Funding**

#### **Scottish Women's Rights Centre (SWRC)**

#### **About Us**

[JustRight Scotland](#) is a registered charity established by an experienced group of human rights lawyers. We use the law to defend and extend people's rights, working towards a model of collaborative social justice – lawyers working with non-lawyers and others – towards the shared aims of increasing access to justice and reducing inequality in Scotland. We do this by providing direct legal advice to individuals and organisations, running outreach legal surgeries and helplines, delivering rights information, training and legal education, and contributing to research, policy and influencing work. We work across a number of policy areas including women's legal justice and gender-based violence, trafficking and exploitation, disability and trans justice, and migration and citizenship.

The [Scottish Women's Rights Centre \(SWRC\)](#) is a unique collaborative project, between JustRight Scotland, Rape Crisis Scotland and the University of Strathclyde Law Clinic, that provides free legal information, advice and representation to women affected by violence and abuse. The SWRC exists because of abuses of power and because a gap persists between women's experience of violence and abuse and their access to justice. The SWRC strives to fill these gaps by working with specialist solicitors and experienced advocacy workers. Informed by our direct work with victims/survivors of violence and abuse, we seek to influence national policy, research and training to improve processes and systems, and ultimately to improve the outcomes for women who have experienced gender-based violence (GBV).

At JustRight Scotland we understand that the ability of local government to deliver the support, justice and safety desperately needed by migrants subject to the no recourse to public funds condition (NRPF) is restricted by the devolution settlement which leaves immigration policy reserved to Westminster. JustRight Scotland is on record expressing our opposition to the continuation of hostile environment policies by the UK Government and the harmful practices of the Home Office. We have provided legal

and policy input where possible, to local authorities in order for them to deliver what they can whilst respecting legislative boundaries in order to act with humanity and fairness towards migrants who are at risk of, or already living in, destitution.<sup>1</sup>

We firmly believe that NRPF is a harmful policy that is putting the lives of migrants across Scotland at risk. The recent High Court ruling which found part of NRPF policy unlawful,<sup>2</sup> has resulted in a slight softening of NRPF restrictions, however the policy must be scrapped altogether and a clear and legitimate funding route to support migrants who need financial, legal, wellbeing or third sector support must be created.

### **Question 1:**

**Has your organisation been providing support to people with NRPF, and if so, what support have you been providing? What are the practical challenges?**

JustRight Scotland and the Scottish Women's Rights Centre provide legal advice and representation to individuals and families who are subject to the no recourse to public funds condition (NRPF), as well as second-tier advice to organisations that support people with NRPF, and legal information and professional training on the rights of people with NRPF.

We do this work in the context of giving advice on immigration, EU law and asylum law, on the rights of survivors of trafficking and exploitation, and on the rights of survivors of gender-based violence, including sexual harassment, rape and domestic violence.

We also host the [Just Citizens](#) project which is making the case for everyone living in Scotland to be able to access equal rights, regardless of their immigration status. The project works to ensure everyone living in Scotland has the right to belong, including EU citizens, refugees, asylum seekers and migrants from many other backgrounds, as well as native Scots. The project is led by the JustCitizens advisory panel, people with lived experience of migration and the immigration system, and we will be working together to develop a "social citizenship" model for Scotland.

In our response below we seek to highlight specific cases to demonstrate clearly the lived experience of migrants and asylum seekers, and the reality of harm caused by

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<sup>1</sup> We are co-authors of Scottish Govt/COSLA's "Migrant Rights and Entitlements: Guide to Local Authorities" (<http://www.migrationscotland.org.uk/migrants-rights-entitlements/>) (2019) and to the COSLA "Covid19 Response Planning: Framework for Supporting Migrants with No Recourse to Public Funds" (<http://www.migrationscotland.org.uk/uploads/Guidance%20Covid%2019%20Supporting%20People%20with%20NRPF%20200420%20%28002%29.pdf>) (20 April 2020).

<sup>2</sup> *R (W, A Child By His Litigation Friend J) v The Secretary of State for the Home Department & Anor* [2020] EWHC 1299 (Admin) (21 May 2020) (<https://www.bailii.org/ew/cases/EWHC/Admin/2020/1299.html>)

current policies and systemic inequalities, drawing on our legal casework, our JustCitizens advisory panel, and frontline casework from our partner organisations.

**Barriers to accessing accommodation and financial support** – The most obvious direct impact of the NRPF condition is to restrict access to most mainstream forms of accommodation and financial support. For NRPF individuals and families who are not permitted to work (because they do not have lawful status) or who are not able to work (because of disability, caring responsibilities or for some other reason), the combination of an inability to work and a prohibition on accessing public benefits will likely result in destitution and homelessness, at a level of severity and for periods of time that will exceed the average experience of a non-migrant in similar circumstances, living in Scotland.

**Increased risk of exploitation and harm for women with NRPF** – Destitution and homelessness – or the risk of destitution and homelessness – also increases the risk of exploitation and harm for women with NRPF. The NRPF condition can effectively trap women in abusive relationships, particularly where they depend on perpetrators of abuse and are unable to flee because of the lack of accessible options, including safe refuge spaces. Similarly, the NRPF condition can increase vulnerability to other forms of exploitation, including trafficking and physical or sexual abuse. This vulnerability is compounded where women also have uncertain immigration status and are fearful of contact with statutory authorities, including the police, the NHS and social services.

**Barriers to accessing the legal advice** – Destitution and homelessness also constitute barriers to people accessing the legal advice people with NRPF require to change their situation. They may not have the time needed to research where to access advice or information when they are working to simply keep themselves alive and safe, day to day (particularly when there is conflating and complex information for them to decipher). The cost of access to technology (including access to mobile data) can be prohibitive – a factor that has become more important as legal advice during Covid-19 is increasingly offered primarily, or solely, online. Finally, some migrants may face a language barrier which either prevents them accessing services or creates additional challenges if they (or an advising agency) requires to pay for interpretation/translation services.

## **Question 2:**

**What does the UK Government and Scottish Government need to do, if anything, to support providers of services in the local government and third sectors who are assisting people with NRPF?**

### **For the UK Government:**

- **There must be an overdue, urgent review of the NRPF condition,** particularly after repeated evidence of the negative human rights impacts of the

policy. For example, the deeply harmful impact on women fleeing abusive relationships but with no right to publicly funded support services or shelters or to those living in destitution with no access to publicly funded housing or food banks. NRPF is one element of the wider implementation of a suite of hostile environment policies which include the closing of formal and safe routes for asylum seekers, increasing costs of citizenship and intensified scrutiny. In order to create a safer and fairer Scotland for migrants, NRPF should be reviewed through a human rights lens alongside wider UK immigration policy and Home Office processes.

- Our work with migrants has given us clear insight into the dire experience of many under NRPF and **we call for the NRPF policy to be repealed**. However, at the very least we recommend that due to Covid-19 NRPF restrictions be suspended for a reasonable period of time to ensure the health and wellbeing of migrants and as a necessary wider public health benefit.<sup>3</sup>
- The [#LiftTheBan campaign](#) to extend the right to work to asylum seekers offers a practical opportunity to reduce asylum seeker destitution for some people. Giving asylum seekers the right to work not only recognises that our sense of human dignity is linked to our ability to contribute to society, but will also support economic growth and promote integration, as well as reduce the cost of asylum support overall. **We join the call for the UK government to lift the ban on employment of asylum seekers** as an urgent and effective response to these economic challenges.

#### **For the Scottish Government:**

- **The Scottish Government must pursue every route possible within devolved powers to mitigate the impact of NRPF on migrants in Scotland.** For example, exploring avenues to create access to funding (potentially through devolved social security measures) for migrants who are at risk of destitution as a consequence of their NRPF status.
- We believe that the global pandemic provides a reasonable cause for current measures to be improved or enhanced to ensure the human rights of migrants are being realised and respected in Scotland. Under the current restrictions, the Scottish Government is complicit in allowing migrants and migrant families to live in poverty and to continue to experience injustice. For similar reasons, local

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<sup>3</sup> We refer to the example of the Portuguese government, which has taken practical steps to suspend restrictions on access to public services for some migrants as part of their emergency response to the Covid-19 pandemic. See *The Independent*, "Coronavirus: Portugal to treat migrants as residents during the pandemic," 28 March 2020, (<https://www.independent.co.uk/news/world/europe/coronavirus-portugal-migrants-asylum-seekers-treatment-residents-a9431831.html>).

authorities must meet their obligations to safeguard vulnerable adults and children, and promote the welfare of all children in their area, regardless of their nationality or migration status.

- In particular, we call for the Scottish Government to:
  - **Co-ordinate a cross-government response** to identify and redress the harmful impact of NRPF on individuals and families and to rethink structural biases in our current processes to ensure better outcomes in future. We recommend this builds on current work led by COSLA and the NRPF practitioners network, and set out in the Ending Homelessness Together Action Plan, but with the scope to draw together a wide range of bodies involved in services that impact the lives of people with NRPF. We also recommend this work is designed and delivered with people with lived experience of NRPF.
  - Ensure **early access to free, confidential legal advice** for people with NRPF as an effective means of identifying routes out of destitution and homelessness for people with NRPF, and of improving outcomes by reducing vulnerability to exploitation and abuse. This work should be accessible to people with NRPF, meaning its planning and delivery takes account of the barriers faced by them in accessing advice, and it should be delivered holistically, meaning that legal advice agencies should have capacity and expertise to effectively signpost and refer clients to an appropriate range of partner organisations to address other, related needs as they are identified.
  - **Explore the effectiveness of using statutory guidance or primary legislation** to achieve greater protection against harm and ensure access to a minimum standard of accommodation and support for people and families with NRPF.
- We call on the Scottish Government to extend targeted public health / poverty alleviation and measures to migrants with NRPF. For example, **we support the recent call by BEMIS and the Poverty Truth Commission for the £500 discretionary payment for those on low incomes who are forced to self-isolate to be extended to migrants with NRPF**. We appreciate that this will require assessment against an income and evidence threshold, however, we would implore that any route taken to pursue this is not restrictively bureaucratic and that funding can be provided quickly, given how quickly the already precarious circumstances of some migrants can rapidly change, particularly during Covid-19.

- The Scottish Government has on many occasions (including in response to a recent letter from JustRight Scotland) expressed their opposition to the UK Government's hostile environment policies. The growing opposition to NRPF is a clear opportunity to increase pressure on this issue. As such we would recommend that the **Scottish Government takes this forward and explores potential policy and legal routes to express their opposition to UK hostile environment policies, including NRPF.**
- **The Scottish Government should provide long-term and sustainable funding to organisations which are on the ground and providing frontline and potentially lifesaving services for migrants.** Crucially, these are also organisations taking a proactive community focused, anti-racist and intersectional approach and should be supported to continue to do so.

Our JustCitizens panel explains:

*"The biggest thing I would want to happen is Trust. There is a lack of trust from the local councils, a lack of trust from the Scottish Government, a lack of trust from mainstream organisations. We have experienced this as a grassroots organisation led by black folk - you highlight the issues in the community and there is a question mark somewhere, somehow, over what you are saying.*

*Grassroots and BAME organisations reach communities. They are the heartbeat of the people experiencing these challenges and are often led by people with lived experience. They are providing emotional support, physical support, financial support, and helping people integrate. When you come to us, you can find the comfort that people are seeking when they are living with fear and hunger and isolation."*

- **The Scottish Government should create clearer and more formal routes for people with lived experience of NRPF and of being a migrant in Scotland to have input to policy, decision making and accountability.** Repeatedly, in our work with migrants they express their fatigue and frustration cause by consultation which "seems to go nowhere". A small number of "representatives" from the migrant community are asked for their input, often asked to repeat their stories of trauma (without follow up and support for their wellbeing). Despite participating, they express frustration that they receive no feedback and do not see any of the needed improvement in their lives.

Our JustCitizens panel adds:

*"When they come to consult with you it is like they have already made up their minds and that is what feels tokenistic. I want to know: who gets to write the report?"*

*“And...I don't want you to take this the wrong way, but when it is BME women who have led the work, led the campaign, fed into the evidence...and it is white women sitting at the table, that doesn't feel right.”*

### **Question 3:**

#### **How has Covid impacted the support available to people with NRPF?**

The impact of Covid-19 has been felt significantly by the migrant community and in particular those with NRPF. Whilst many of those with NRPF are able to work, with Covid-19 restrictions many found themselves with reduced hours (and therefore reduced income) or made redundant. Others lost out on income as they were themselves in the shielding/isolating category or may have been a carer for those with underlying health conditions. As such, additional financial and physical access barriers to obtaining support have significantly increased during Covid-19.

As the Poverty Truth Commission highlighted earlier [this week](#), for those under NRPF who must follow the law by self-isolating (and therefore not working) they risk living for 14 days without food, heat or shelter.

Covid-19 has also exacerbated existing inequalities. We know that those from [Black, Asian and Minority Ethnic backgrounds are more likely to die](#) as a consequence of contracting Covid-19, that [disabled people are more likely to be made redundant due to the economic consequences](#) and [women are taking on disproportionate levels of care](#). For migrants, the impact of Covid-19 has been deeply felt through financial insecurity and loss of income, the unsafe housing of asylum seekers in hotels, food insecurity and the reality that migrants are significantly [more likely to be in low-paid, frontline and key work \(e.g. retail and healthcare\)](#) where there is a higher chance of Covid-19 exposure). It is also important to note, that these inequalities do not exist in isolation from one another and many in Scotland experience multiple and compounding inequalities (for example, migrant women with NRPF).

Organisations who advocate for, support and provide services which are open to all migrants may be publicly funded, however pursue additional funds through donations, specialist funding or trusts to enable them to support those with NRPF. Due to Covid-19, the ability to fundraise and sustain services which support all migrants is under considerable strain, especially as services are in higher demand. Organisations providing support for people with NRPF are, often, also providing a wider range of services for communities experiencing inequalities. Given the disproportionate impact of Covid-19 on BME, disabled and working-class communities and women, support services are in huge demand with already limited funds.

As mentioned previously, many support services (particularly, legal, advocacy and information services) have moved online and to access them there is the requirement of access to technology, affordability of data or broadband and assumption of a level

of digital literacy. All of these factors act as additional barriers to potentially accessing critical support.

### **NRPF Individuals and Families**

As outlined above, we have seen Covid-19 increasing barriers to accessing support for NRPF individuals and families.

Our JustCitizens panel gave these examples:

*“Yesterday we were speaking to a lady who has NRPF. Her kids were born in Scotland and she is an asylum seeker... With all the support [that local councils say are available for low income families], these kids are left out. The parents can’t access that support. She said it is like they are “not recognised” - the kids are born here in Scotland, but they do not count.”*

*“There is another lady, in a similar situation, with children. They contacted their MP to see if they can get extra support from the council. Because everyone is shouting about this extra support that is available [for families during Covid-19]. They contacted the social services, and they said unfortunately they cannot get support because they are NRPF, they do not have a category they fit into [for support].”*

In a letter written by JustRight Scotland in May 2020 to the First Minister, Nicola Sturgeon MSP, and the Home Secretary, Priti Patel, MP, we shared a case study of a young person we have worked with also impacted by these issues:

*A 16-year-old girl, fleeing domestic abuse in the family was not provided with ‘looked after’ care by her local authority for several weeks, supposedly due to Covid-19 restrictions and uncertainty about her migration status. She was placed in inappropriate homeless accommodation with no fixed financial support, and was forced to rely on food parcels from a local charity and hand-outs from a social worker to top-up her phone. She was isolated and put in an unacceptably vulnerable position.*

### **Asylum Seekers**

The Committee will also be aware that there have recently been three deaths of people in Glasgow who were accommodated and supported by the Home Office through the Asylum Support system: Adnan Walid Elbi, Badreddin Abedlla Adam and Mercy Baguma.

Glasgow MPs have recently [called for a fatal accident inquiry](#) into the deaths of these three asylum seekers, and we observe that many of the challenges faced by these asylum seekers in accessing the support and protection that they require — and to which they have a right under our own Scots welfare legislation — are also commonly faced by people with NRPF.



We recommend that lessons drawn from any such inquiry should be closely reviewed by the UK and Scottish government in evaluating the wider impact of NRPF and of local authority responses to people with NRPF.

## **EU Citizens**

Our partner organisations, the [EU Citizens Rights Project](#) and [Feniks Counselling, Personal Development and Support Services](#), support EU citizens in Scotland to apply for Settled Status and access their rights.

They tell us that from the beginning of the pandemic (early March 2020) the UK government has stopped issuing National Insurance Numbers (NINOs). The service is still unavailable to EU nationals.<sup>4</sup>

As Gabriela Ingle from the EU Citizens Rights Project explains:

*“As insignificant as this may appear, people without the NINo cannot access certain benefits (e.g. child benefit), have a lot of problems with finding or keeping employment (many employers just won’t interview or employ candidates with no NINo), and many were just sacked instead of being furloughed (again, the job retention scheme is much more complicated for those with no NINo).”<sup>5</sup>*

It is also important to remember that, at present, EU citizens who have Pre-Settled Status are not automatically eligible for Universal Credit and many other UK Department of Work and Pensions (DWP) means-tested benefits.

This means that EU citizens who live in Scotland but do not have Settled Status are at greater risk of destitution – either because they cannot access the proof of eligibility they require to access benefits and services they have a right to access, or because they are excluded by law from certain benefits and services. We caution that this risk is particularly concerning in the context of Covid-19, and an imminent recession, during which we expect to see higher unemployment and an increase in individuals and families being pushed towards the poverty line.

We also refer here to the additional discrimination that women can face in making successful applications for either Settled Status or to meet the evidential requirements to qualify for benefits. As carers, mothers and part-time workers (often in precarious work) they may lack the required documentary evidence and as a result lose out on the entitlement to reside and the benefits that that they have a right to secure. In

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<sup>4</sup> From the GOV.UK website: 'You can currently only apply for a National Insurance number in England, Scotland and Wales if you have entered the UK **on a visa**. You cannot apply for a National Insurance number in Northern Ireland. This is because of coronavirus (COVID-19).' (<https://www.gov.uk/apply-national-insurance-number>)

<sup>5</sup> See for example, Chartered Institute of Taxation, “Job Retention Scheme Applications for Employees with no NINo,” (<https://www.tax.org.uk/policy-technical/technical-news/job-retention-scheme-applications-employees-no-national-insurance>)

addition, women experiencing domestic abuse face additional barriers, where their perpetrator creates financial dependency and women are prevented from working.

As in our comments above, whilst EU citizens may not be strictly NRPF, we suggest that the destitution and vulnerability that arises as a direct consequence of their “migrant” status and the UK hostile environment rules are in common with those faced by asylum seekers and people with NRPF. We also propose therefore that the pressing need for solutions be urgently examined alongside the Committee’s inquiry into local authority support for people who are NRPF and for asylum seekers.

### **All Migrants – NRPF and/or Subject to Restrictions on Access to Benefits**

In summary, the above case studies, drawn from our legal casework, the lived experience of our JustCitizens, and the casework of our partner organisations tend towards this conclusion – expressed by a member of our JustCitizens panel:

*“Covid is continuing to leave people out. On the surface it looks like [the government has said] everyone is getting support but underneath people are left out but it is making things worse.*

*[P]eople used to travel and meet a friend and get [charitable and informal] support and advice here and there but now they can’t. Covid has really hit these communities hard. It is still hitting these communities really hard.”*

#### **Question 4:**

#### **From your perspective, have local authorities been able to support people with NRPF sufficiently during the pandemic?**

Local authorities, with the support of on-the-ground services and third sector organisations, have made welcome interventions to protect the wellbeing of migrants. This has included providing short-term accommodation for street homeless EU citizens in hotels, and allocating funding to services such as the Glasgow Night Shelter to provide immediate support to people with NRPF.

However, there have been considerable gaps in provision which have put migrants’ lives at risk. The decision by Mears to house asylum seekers in hotels has had harmful consequences, with many migrants [reporting](#) that they were forcibly moved (away from what they believe to be safer accommodation) with little notice. Whilst this was argued to be for migrants’ safety during Covid-19, communal accommodation (including communal dining) has arguably, put them at more risk. [Migrants have reported substandard meals](#), a lack of support and an impact on their mental wellbeing. This has resulted in calls for a public inquiry into the Mears Group failure to meet a duty of care to migrants, which JustRight Scotland supports.

In order for local authorities to be able to deliver the care and support needed by the migrant community and specifically those with NRPF, there must be a consistent approach between authorities which includes further funding allocated, safer accommodation and clear routes for financial, legal and wellbeing support.

When speaking to national organisations and stakeholders who support those with NRPF, this lack of consistency between local authorities has been emphasised, particularly in emergency support for migrant women escaping abusive relationships and in need of access to housing. They state that fear, a lack of knowledge and an unnecessarily complex policy environment prevent local authority staff from providing the life-saving interventions that women with NRPF may need.

As Girijamba Polubothu from [Shakti Women's Aid](#) explains:

*“Local authorities are hesitant to accommodate women with NRPF. We make a referral to social services but there is no consistency in service across Scotland... One woman wasn't able to leave because no one will offer her accommodation. She was forced to live with the abusive partner.”*

The death of Mercy Beguma, the experiences of those on our JustCitizens panel and the casework we deal with on a daily basis illustrate that, despite efforts, migrants with NRPF who are in need of potentially life-saving support are falling through the cracks and being let down by harmful UK Government policy which is then implemented by our local authorities.

## **Conclusion**

Whilst we have worked with COSLA, the Scottish Government and individual local authorities and understand that there have been considerable efforts delivered to create a fairer and safer Scotland for all migrants, this is far from being realised whilst NRPF restrictions continue.

With the current lack of access to support and at times, dangerous and precarious housing and employment situation migrants with NRPF find themselves stuck in, local authorities are not able to meet their duty of care to migrants and are not able to support the realisation of the vision in the [New Scots: Refugee Integration Strategy](#) which states an ambition for Scotland to be “...a place of safety for everyone, where people are able to live free from persecution as valued members of communities.”

Throughout the pandemic we have witnessed measures being implemented that were once considered unobtainable: hotels used to accommodate those who are homeless and increases in financial support for those who have lost income. These measures need to continue (and in many cases need to be extended) through the duration of the pandemic to ensure the safety of migrants lives and to take seriously wider public health responsibilities.

However, a longer-term plan to support NRPF migrants is required which takes into consideration the longer term economic, social and health consequences that are likely to exist beyond the duration of the immediate crisis. This can only happen through a human rights and equalities focused approach which sees an end to hostile environment policies from Westminster, however significant positive change can be made through the Scottish Government pursuing every avenue possible to mitigate the impact of NRPF and enabling local authorities to take action to protect some of their most isolated and ignored residents.