



Borders Immigration Citizenship Systems

Asylum & Family Policy Unit

Policy Equality Statement (PES)

Useful guidance:

[Discrimination and differentiation guidance](#)

[Policy Equality Statements](#)

1. Name and outline of policy proposal, guidance or operational activity

Section 3(1)(c)(ii) of the Immigration Act 1971 provides that, if a person is given limited leave to enter or remain in the United Kingdom, it may be given subject to a condition requiring that person to maintain themselves, and any dependants of his, without recourse to public funds. Persons granted leave to enter or remain as partner, child or parent under the 10-year route in the Immigration Rules Appendix FM will be granted leave to remain for a period not exceeding 30 months and subject to a condition of no recourse to public funds ("NRPF") unless the decision-maker considers, with reference to paragraph GEN.1.11A that the applicant should not be subject to such a condition. Paragraph GEN.1.11A states that such leave will normally be granted subject to a condition of no recourse to public funds, unless the applicant has provided to the decision-maker: (a) satisfactory evidence that the applicant is destitute as defined in s.95 of the Immigration and Asylum Act 1999; or (b) satisfactory evidence that there are particularly compelling reasons relating to the welfare of a child of a parent in receipt of a very low income. It is this policy on the imposition of a condition of no recourse to public funds on persons granted leave to remain under the 10-year route as a partner, child or parent which is the subject of this PES.

Guidance on the circumstances in which the condition will be imposed or lifted is contained in Family Policy: Family life (as a partner or parent), private life and exceptional circumstances (v.5.0 10 December 2019

(<https://assets.publishing.service.gov.uk/government/uploads/system/uploads>

[/attachment_data/file/851342/family-life- as-a-partner-or-parent -private-life-and-exceptional-circumstances-v5.0-ext.pdf](#)), in particular at pp.87-92. Other categories of migrant are granted entry clearance or leave to remain with a condition of no recourse to public funds, but the immigration rules and policy relating to them are not the subject of the PES. The fact that a condition of NRPF is imposed on many categories of migrant, and is authorised by primary legislation, is a relevant part of the context in which the policy which is the subject of this PES (“the Policy”) falls to be considered.

2. The basis of assessment

This PES assesses whether the Policy meets the requirements of the Equality Act 2010 Part 3 (ss.28-31) (services and public functions) and in doing so, regard has been had to the Home Office’s obligations under s.149 (public sector equality duty (“PSED”)). This assessment includes consideration of whether the Policy fulfils the Secretary of State’s duty under s.55 of the Borders, Citizenship and Immigration Act 2009 to make arrangements for ensuring, among other things, that any function of the Secretary of State in relation to immigration, asylum or nationality and any function conferred by or by virtue of the Immigration Acts on an immigration officer is discharged having regard to the need to safeguard and promote the welfare of children who are in the United Kingdom.

3. Why this PES is being produced at this time

A PES was published on 6 April 2015. Since then there have been a number of changes to the Immigration Acts and to the Immigration Rules. A 6 March 2019 consent order in a claim for judicial review of decisions taken under the Policy (CO/4615/2018) included a commitment by the Secretary of State to undertake a PSED-compliant review of the Policy. This initially took the form of an audit of files undertaken between April and June 2019, subsequent to which a number of recommendations were made. During the course of the review it was decided to produce a new PES, and this is it.

4. The evidence base

The reviewers examined 240 case files randomly selected from change of conditions applications made during the 2018/19 financial year. The data from this audit were collated on spreadsheets (**Annex A**).

The Policy was also discussed in the regular meetings that the Home Office holds with the children and young persons’ sub-group convened and chaired by the Coram Children’s Legal Centre. Meetings were held in January, May, July and September 2019 (when initial findings from the review were presented) and on 21 January 2020 (which discussed a 14 January 2020 letter from the Home Office to Coram summarising the findings of the review). Other participants in these meetings were the Immigration Law Practitioners’

Association, Just for Kids Law, The Children’s Society, the Greater London Authority, Let Us Learn, the Migrant and Children’s Legal Unit, the Unity Project, Project 17, and the No Recourse to Public Funds Network.

On 27 January 2020 the Home Office sent to these bodies “No Recourse to Public Funds: Change of Conditions Applications – Stakeholder Engagement Document” (**Annex B**). This document summarised the key findings of the review and sought views on a number of potential further improvements. Responses were requested by 14 February. The document was also sent to a firm of solicitors which has acted for a number of applications seeking the lifting of NRPF conditions. All the responses received have been taken into account in producing this PES.

Further details of the evidence base are given in **Annex C**.

The Policy was the subject of Parliamentary debate in the House of Commons on 19 March 2019 and in the House of Lords on 9 July 2019.

The Parliamentary debate on the Unity Project report is at:

<https://www.theyworkforyou.com/lords/?id=2019-07-09b.1776.1&s=Unity+project#g1777.0>

The debate following the question put by Baroness Lister is at:

<https://www.theyworkforyou.com/wrans/?id=2019-09-03.HL17656.h&s=Baroness+Lister#gHL17656.q0>

The Education Minister responded to a debate on Children Act 1989: Local Authority Responsibilities:

<https://www.theyworkforyou.com/debates/?id=2019-03-19a.1015.3&s=local+authority+responsibilities#g1022.0>

5. Evaluation of the Policy

The Equality Act 2010 prohibits direct because of, and indirect discrimination in relation to, relevant protected characteristics. For present purposes the relevant protected characteristics are: age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation. The duty under s.29 does not apply to the protected characteristic of age so far as relating to persons under 18.

Section 29 prohibits discrimination in the provision of services. This duty is subject to the exceptions in Schedules 3 and 23. Accordingly, this duty does not apply to preparing, making or considering an Act or Parliament or changes to the Immigration Rules. Nor does it apply to race discrimination, so far as relating to nationality or ethnic or national origins, in the exercise of functions exercisable under the Immigration Act or Immigration Rules. Nor does it apply to anything done pursuant to the Immigration Acts or Immigration Rules

which discriminates against another because of the other's nationality or by applying a provision, criterion or practice which relates to the other's place of ordinary residence or the length of time he has been present or resident in or outside the United Kingdom.

The PSED provides that a public authority, in the exercise of its functions, must have due regard to the need to- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited under the 2010 Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it (in particular by, among other things, removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic, taking steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it, encouraging persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low); (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it, in particular by tackling prejudice and promoting understanding.

The PSED is subject to the exceptions set out in Schedule 18. Accordingly, s.149(1)(b) does not apply in relation to the exercise of functions under the Immigration Acts (excluding the offences under ss.28A-28K of the Immigration Act 1971) to age, race (so far as it relates to nationality or ethnic or national origins) or religion or belief.

This PES proceeds by assessing the Policy against these duties, taking the applicable relevant characteristics in turn. It does so in the contexts of persons with leave to remain under the 10-year route on the basis of family life. This requires consideration of all the relevant family members, not just the applicant for leave to remain.

The Policy

A condition of NRPF is imposed on a grant of entry clearance or leave to remain for many categories of migrants. This is because it is the view of both Parliament and the Secretary of State that it is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons are not a burden on taxpayers and are better able to integrate into society. These considerations are reflected in provisions of primary legislation, and of the Immigration Rules, which contain powers or duties to make persons subject to immigration control ineligible for specified public funds. In particular, persons granted entry clearance or leave to remain under the 5-year route in Appendix FM as a partner, child, or parent all have an NRPF condition on their limited leave. Persons who are on the 10 year route are persons who do not meet the requirements in the Immigration Rules for the 5 year routes but whose circumstances are such that it would be a breach of article 8 ECHR and thus

s.6 of the Human Rights Act 1998 to refuse them entry clearance to or leave to remain in the United Kingdom. These persons will have a NRPF condition imposed, or not, as the case may be, in accordance with the Policy. Fairness in the treatment of different classes of migrants would be undermined if those who do not meet the requirements of the Immigration Rules which come with a mandatory NRPF condition were allowed access to public funds without restriction or if the Policy did not reflect the numerous provisions of primary and secondary legislation which, with specified exceptions, disentitle persons subject to immigration control to specified public funds. A NRPF condition also encourages third country nationals wishing to have children here to ensure that they have sufficient resources to support themselves and their children, seeks to reduce benefits tourism and encourages immigrants here unlawfully to regularise their stay, as the Supreme Court accepted in *R (HC) v Secretary of State for Work and Pensions* [2017] UKSC 73 [2017] 1 WLR 1486 at [32].

An applicant granted entry clearance or leave to remain under the 5-year route in Appendix FM as a partner, child, or parent with leave subject to a NRPF condition may apply at any time to have the condition lifted. Those who are on the 10-year route are able to apply at the point of being placed on that route and subsequently. To do so, the applicant completes a form and supplies supporting evidence. The request for a change of conditions may be accessed by applicants here:

<https://www.gov.uk/government/publications/application-for-change-of-conditions-of-leave-to-allow-access-to-public-funds-if-your-circumstances-change>

Article 8 ECHR requires Contracting States to strike a fair balance between the individual applicant and the interests of society. The striking of that balance is relevant to the PSED duty to have “due” regard, and to what is a proportionate means of achieving a legitimate aim when considering indirect discrimination in the provision of services under s.29.

Section 29

Recourse to public funds is not a service but the s.29 duty also applies to a person exercising a public function.

The s.29 duty does not apply to age, so far as relating to persons under 18.

The s.29 duty does not apply in relation to decisions made pursuant to the Immigration Acts on grounds of nationality or ethnic or national origins, nor to the application to a person of a provision, criterion or practice which relates to her pace of ordinary residence or to the length of time she has been present or resident in or outside the United Kingdom.

The imposition of a NRPF condition does not discriminate directly on the basis of any of relevant protected characteristics, nor does the Policy impose an NRPF condition because of something arising from an applicant’s disability.

As regards indirect discrimination, the Policy is “provision, criterion or practice” for the purposes of s.29. The Policy applies equally to persons who do and to persons who do not share a relevant protected characteristic. Whether the Policy puts applicants, or their family members, at a particular disadvantage when compared with persons who do not share the relevant protected characteristic, and whether, if it does, this is a proportionate means of achieving a legitimate aim, is considered below in respect of each of the relevant protected characteristics in turn. When making the comparison, there must be no material difference the circumstances relating to each case.

Age

Section 29 does not apply to age discrimination in respect of anything done in the exercise of a function under the Immigration Acts or the Immigration Rules: s.31(1) and Schedule 3 paragraph 15A.

We have nevertheless considered whether adults with this protected characteristic are particularly likely to be affected by the Policy. An elderly person may have a very low income and be at risk of destitution for that reason but not immediately because of their age. The Policy caters for this risk factor. There is no evidence that the Policy, and the impact of the imposition of a condition of NRPF when it is imposed under that Policy, puts any age group of adults at a particular disadvantage when compared to adults who are not of that age group.

In 2014, the majority of each age group was granted leave with no recourse to public funds, see table 1 (83%-94%). The proportion of under-18s who had the no recourse to public funds condition code not imposed or lifted was higher (17%, 69) than any other age group. For all those granted under the 10-year family and private life routes in 2014, just under half were aged between 26 and 35 years (48%, 5,304).

Table 1. Age of those granted under the 10-year family and private life routes, 2014

Age	NRPF	%	RPF	%	Total	Total %
Under 18	342	83%	69	17%	411	4%
18-25	1,677	94%	102	6%	1,779	16%
26-35	4,947	93%	357	7%	5,304	48%
36-45	2,578	91%	247	9%	2,825	26%
46-55	552	92%	49	8%	601	5%
56-64	96	93%	7	7%	103	1%
65+	21	91%	2	9%	23	<1%
Total	10,213		833		11,046	100%

In 2019, only 0.42% of cases reviewed that year featured an applicant aged over 60, and only 7.14% aged between 50 and 59. The majority of applicants are 30-49.

Anyone who meets the criteria for non-imposition, or lifting, of the NRPF policy, regardless of age, will have the NRPF condition code not imposed or

lifted. It is not possible for guidance to cover every possible combination of circumstances that might be involved in an application. In all cases where an application has been made for non-imposition, or lifting, of the NRPF policy, the guidance referred to at page 1 above and explained in this PES does not fetter the discretion of the Secretary of State not to apply or to lift the NRPF condition if there are exceptional circumstances that warrant this¹. So, a person could still have the NRPF condition code not imposed or lifted on the basis of age-specific factors in a case that justified exceptional treatment. Any representations made by the applicant would be given careful consideration.

It is also considered that the design of the Policy, which requires decision makers to consider the applicant's individual circumstances, provides an adequate safeguard to deal with any adverse impact on this protected characteristic.

Disability

Data is not available on the number of disabled persons who may be affected by the Policy. Yet the presence of disability was recorded during the review, as a vulnerability factor, and found present in three cases and claimed in one more, out of 240 cases reviewed. Two of these applications for lifting the condition were granted.

Those with disabilities may face particular challenges in securing employment or may be more likely to work part time rather than full time thereby making them more at risk of destitution. Those with disabilities may also find it harder to secure adequate affordable accommodation. Disability could therefore be a factor leading to an applicant being in receipt of a very low income or becoming destitute. The Policy requires consideration of each applicant's individual circumstances. This is true whether it is the main applicant who is disabled or one or more of their family members. There are no fixed monetary values attached to the destitution criterion. Rather the criterion is whether this particular applicant in the context of their individual circumstances has adequate accommodation or the means of obtaining it, or whether they are able to meet their other essential living needs. What constitutes "adequate accommodation" and "essential living needs" and the costs of these may look different for a person who has a disability compared to someone without a disability, depending on the nature of the disability. But the Policy allows the caseworker to take this into account.

It would not be appropriate to design a blanket policy approach to disability, as every individual is different, and their income may be affected differently depending on their personal circumstances and the exact nature of the disability they have. The Policy is designed for a case-by-case consideration on the basis of the information and evidence provided by that applicant.

¹ This discretion is found in primary legislation, namely the Immigration Act 1971, section 3(i)(c)(ii)

Where an applicant provides information about their own or a family member's disability and explains the impact this has on their financial circumstances, this will be taken fully into account and given appropriate weight. Thus, the guidance referred to on page 1 above says:

*“What constitutes ‘adequate accommodation’ and ‘essential living needs’ and the costs of these may be different in different cases, depending, for example, on whether the applicant is supporting any dependants and, if so, their number, age and needs, the part of the UK the applicant lives in, **whether the applicant or any dependants have a disability which requires adjustments to be made to their accommodation.**”*[emphasis added]
(Page 89).

Where the decision maker believes that the issue of disability may be material to the decision and there is insufficient information in this respect on which to base a decision, the applicant may be invited to submit further information or evidence. We have already introduced the ability of decision makers to write out for more information and this includes cases where disability of the applicant or of a family member is raised. In most cases what is required is that the applicants establish their disability (or that of a dependent family member) by means of independent documentary evidence, such as a letter from a hospital consultant. If there is evidence that the applicant has special needs and may need assistance to present their case clearly, the decision maker can signpost them to other agencies who may be able to assist, such as Citizens Advice. Details of the applicant's local branch of Citizens Advice are available here: <http://www.citizensadvice.org.uk/> .

The Policy, by requiring decision makers to consider the applicant's individual circumstances, provides an adequate safeguard to deal with any indirect adverse impact such as limited financial circumstances or the need for additional expenditure, for instance on transport, that is linked to this protected characteristic. It is not possible for guidance to cover every possible combination of circumstances that might be involved in an application. In all cases where an application has been made for non-imposition, or lifting, of the NRPF policy the guidance referred to at page 1 above and explained in this PES does not fetter the discretion of the Secretary of State not to apply or to lift the NRPF condition if there are exceptional circumstances that warrant this. A person could therefore still have the NRPF condition code not imposed or lifted in light on grounds that although they are not destitute, the effect of their disability is to create exceptional circumstances. Any representations made by the applicant would be given careful consideration.

We intend to monitor the effect of the Policy in relation to disability. We will start by seeking to collect information through the application process on the numbers of persons who are disabled, or who care for a child who is disabled, and the outcome of their application. We recognise that providing this information will be voluntary, and that not every applicant with a disability may wish that to be made known, particularly if sufficient evidence to support the Change of Conditions application can be produced without providing these

details. We will nevertheless consider how the collection of data on applicants with disabilities can be achieved in a reliable way.

The application form for a Change of Conditions request is now available online and support in completing the form for those who may have difficulties in navigating it (but not immigration advice) is available from a telephone support service known as We Are Digital.²

The evidence does not currently suggest that the Policy puts persons with disabilities at a particular disadvantage compared with persons who are subject to the Policy but who do not have a disability.

Gender reassignment

Data is not available on the number of persons proposing to undergo, who are undergoing, or who have undergone a gender reassignment process who may be affected by the Policy, but we do not see any evidence or reason to suggest that any adverse impact on grounds of gender reassignment will arise. Any representations made by the applicant would be given careful consideration.

Caseworkers cannot recall having seen any case in which this protected characteristic was raised as an issue in relation to the NRPF Policy. Where gender re-assignment affects a person in ways leading to their ability to have access to adequate accommodation, or to provide for their essential living needs, the Policy allows for the NRPF condition to be disapplied, as with any other applicant.

The evidence does not currently suggest that the Policy puts persons with the protected characteristic of gender reassignment at a particular disadvantage compared with persons who are subject to the Policy but who do not have a disability.

Pregnancy and maternity

Data is not available on the number of persons who are pregnant or on maternity leave who may be affected by the Policy. Amongst the cases considered in the review, only two applicants were pregnant. Both were granted recourse to public funds. We have considered whether there is any reason to think that any adverse impact on the grounds of pregnancy and maternity may arise.

Those who are pregnant or on maternity leave may be at a disadvantage when it comes to income from employment, as their income might be reduced

² 'We Are Digital' provide the support. A telephone appointment may need to be booked with them.

during the period before and after the birth of their child and where, following their return to work, they may need to adjust their hours of employment and secure appropriate childcare. We consider that this group may therefore be at greater risk of destitution. They may also be more likely to be able to show that there are particularly compelling reasons relating to the welfare of their child and that they are on a very low income.

The Policy takes account of this protected characteristic, for an applicant who establishes that she is destitute, or would be rendered so without recourse to public funds, or that there are particularly compelling reasons relating to the welfare of her child where she is on a very low income will qualify under the Policy to have the NRPF condition code either not imposed or lifted, as the case may be. We consider that this will generally provide an adequate safeguard. It may mean that a higher proportion of those applicants who are pregnant or on maternity leave qualify for not having an NRPF condition than persons who do not share that protected characteristic.

As stated above, the guidance as referred to in this PES does not fetter the discretion of the Secretary of State not to apply or to lift the NRPF condition if there are exceptional circumstances that warrant this. Therefore, even if an applicant who is pregnant or on maternity leave has not established that she is destitute, or would be rendered destitute, the Secretary of State retains the ability to exercise discretion not to impose, or to lift, a NRPF condition if the nature of the person's circumstances warrant this. Any representations made by the applicant in this regard would be given careful consideration.

If the Policy puts persons with the protected characteristic of pregnancy or maternity at a particular disadvantage compared with persons who are subject to the Policy but who do not have that protected characteristic (and we have no evidence that this is the position), the Policy pursues legitimate aims (as set out above) and is a proportionate means of achieving those aims.

Race

For the purposes of s.29, race means colour.

We do not collect data recording colour.

The majority of each nationality group was granted leave with no recourse to public funds, table 2 (88% - 98%). A higher proportion of those applicants of nationalities from the Americas region (12%, 164) had the NRPF condition code not imposed or lifted than any other nationality group. Two-fifths of those granted under the 10-year family and private life routes in 2014 were of nationalities from the Africa region (41%, 4,569) and 37% were of nationalities from the Asia region (37%, 4,115). Our 2019 study also showed that a high proportion of applicants were from Africa or Asia.

Table 2.

Nationality of those granted under the 10-year family and private life routes, 2014

Region	NRPF	%	RPF	%	Total	Total %
Africa	4,107	90%	462	10%	4,569	41%
Americas	1,162	88%	164	12%	1,326	12%
Asia	3,964	96%	151	4%	4,115	37%
Europe	656	95%	36	5%	692	6%
Middle East	245	93%	19	7%	264	2%
Oceania	64	98%	1	2%	65	<1%
Other	15	100%	-	-	15	<1%
Total	10,213		833		11,046	100%

Note: Regions as defined in Migration Statistics publications

The final column shows the percentage of applications for the 10-year family and private life routes by region of the world. This shows that the vast majority of applicants for these routes are of nationalities of African (41%) or Asian (37%) countries. We do not know why the proportion of applicants granted recourse to public funds varies by region. Caseworkers suggested that reasons unrelated to nationality, such as how many children an applicant has or their level of education, were more likely to have an impact on the ability of the applicant to meet the terms of the policy.

In the cases reviewed in 2019, most applicants are drawn from five main nationalities:

Nigeria	35.71%
Ghana	14.29%
Pakistan	9.24%
Jamaica	7.98%
Bangladesh	6.30%
Others	26.47%

From the perspective of grant rate, nationality does not appear to be a significant factor. We have noted that the grant rate for applicants from Bangladesh is lower than the 63 – 71% for all other applicants although in studying the applications there is no obvious reason within the details captured to explain this.

Grant rate for the five main nationalities:

	Female	Male	Overall
Nigeria	69.01%	35.71%	63.53%
Ghana	73.33%	50.00%	70.59%
Pakistan	73.33%	57.14%	68.18%
Jamaica	68.75%	66.67%	68.42%
Bangladesh	42.86%	50.00%	46.67%
All	65.61%	55.10%	63.45%

We are confident the Policy takes account of the individual circumstances of applicants regardless of race and nationality. Colour is not a characteristic that is recorded separately on written application forms, and any impact on a person of colour will be because of immigration status. However, in the light of most applicants being Ghanaian or Nigerian and their children sharing in this identity there is disproportionate impact on adults and children sharing the characteristic of being in this particular racial group. Nevertheless, if the applicant has specific circumstances relating to the need to access public funds that are linked to the protected characteristic of race (colour) and which they believe affect their financial circumstances, these will be considered by the decision maker, and can allow for the grant of recourse to public funds.

If the Policy puts persons with the protected characteristic of race (colour) at a particular disadvantage compared with persons who are subject to the Policy but who do not have a that protected characteristic (and we have no evidence that this is the position), the Policy pursues legitimate aims (as set out above) and is a proportionate means of achieving those aims.

Religion or belief

The majority of those granted under the 10-year family and private life routes in 2014 did not have a recorded religion (87%, 9,650). Any further comment on the proportions granted leave with no recourse to public funds or who have the NRPF condition code not imposed or lifted by religion needs to be made with caution due to the small numbers involved.

Table 3. Religion of those granted under the 10-year family and private life routes, 2014

Religion	NRPF	%	RPF	%	Total	Total %
Atheist	37	82%	8	18%	45	<1%
Buddhist	53	84%	10	16%	63	1%
Christian	331	72%	130	28%	461	4%
Hindu	35	83%	7	17%	42	<1%
Roman Catholic	64	80%	16	20%	80	1%
Muslim	417	79%	111	21%	528	5%
Sikh	26	90%	3	10%	29	<1%
Other	124	84%	24	16%	148	1%
Not recorded	9,126	95%	524	5%	9,650	87%
Total	10,213		833		11,046	100%

Due to the small proportion of applicants with a recorded religion, we are not able to draw any conclusions on the effect of religion or belief on an applicant's ability to qualify under the policy. We have considered whether any adverse impact on the grounds of religion or belief may arise. However, we do not have any information to suggest that certain religions are more or less likely to be affected by the Policy. The Policy considers the individual circumstances of each applicant, regardless of their religion or beliefs or lack of beliefs. Any representations made by the applicant would be given careful consideration.

If the Policy puts persons with the protected characteristic of religion at a particular disadvantage compared with persons who are subject to the Policy but who do not have a that protected characteristic (and we have no evidence that this is the position), the Policy pursues legitimate aims (as set out above) and is a proportionate means of achieving those aims.

Sex

In 2014, most of both females and males granted under the 10-year route were granted leave with no recourse to public funds as shown in Table 4. A larger proportion of males (96%, 4,944) was granted leave with NRPF than of females (90%, 5,269), i.e. more females were granted access to public funds. For all those granted leave under the 10-year family and private life routes in 2014, just over half were female (female: 53%, 5,880; male: 47%, 5,116)

Table 4. Sex of those granted under the 10-year family and private life routes, 2014

Sex	NRPF	%	RPF	%	Total	Total %
Female	5,269	90%	611	10%	5,880	53%
Male	4,944	96%	222	4%	5,166	47%
Total	10,213		833		11,046	100%

The 2019 review found females to be more likely to be granted change of conditions:

Grant Rate by Gender

	Grant	Reject	Void
Female	65.61%	33.86%	0.53%
Male	55.10%	44.90%	0.00%
Overall	63.45%	36.13%	0.42%

The higher proportion of women granted leave with the NRPF condition code not imposed, or lifted, than of men may be explained by the fact that there are more applications from women than men for the parent route, and that applicants granted on the parent route may be more likely to qualify under the Policy. Applicants who are granted leave on the partner route will have a partner who is expected to support them and, if their partner is a British

Citizen or settled in the UK, that person will have the recourse to any public funds to which their circumstances qualify them. However, single parents who are granted leave on the parent route might face particular challenges in securing employment along with suitable childcare.

Caseworkers say that they see a significant number of female applicants seeking the non-imposition or lifting of the NRPF condition code who are single parents. This may be because it is more common for children to remain with their mother when a relationship breaks down. We do also receive applications from single fathers, but they are less common. Caseworkers also report that female single parents may have previously been stay-at-home mothers prior to the breakdown of their relationship, and may find themselves without sufficient education or skills, or in some cases English language ability, which may hamper their ability to find employment.

The Office for National Statistics '[Annual Survey of Hours and Earnings, 2019 Provisional Results](#)'³ publication gives a provisional UK gender pay gap for 2019 for all employees (full-time and part-time) as currently 19.1%. Women are still earning on average lower wages than men in the UK. This may be another factor which makes it more likely that women will be have the NRPF condition code not imposed or lifted.

It may be that women are more likely than men to meet the Policy criteria for non-imposition or lifting of a NRPF condition. However, the individual circumstances of every applicant, regardless of their sex, will be taken into account. Anyone who meets the terms of the Policy will have the NRPF condition code not imposed or lifted. Where an applicant does not establish that they are, or would be rendered, destitute and there are no particularly compelling reasons relating to the welfare of their child, caseworkers may exercise discretion to not to impose, or to lift, a NRPF condition if the applicant establishes exceptional circumstances relating to their financial circumstances which, in the view of the decision-maker, require a NRPF condition not to be imposed or to be lifted.

If and insofar as the Policy puts male applicants at a particular disadvantage because of their sex, any such disadvantage is an indirect consequence of the operation of a Policy which pursues legitimate aims (as set out above) and/or is a proportionate consequence of the lawful means of achieving the Policy's aims.

Sexual orientation

Data is not available on sexual orientation, but we have seen nothing to suggest that the Policy puts applicants at a particular disadvantage on the ground of their sexual orientation. We do not have any information to suggest

³ See tables at

<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/annualsurveyofhoursandearningsashegenderpaygaptables>

that any particular sexual orientation makes it more or less likely that an applicant's sexual orientation affects the likelihood of a NRPF condition not being imposed or being lifted. Any representations made by the applicant would be given careful consideration.

The evidence does not currently suggest that the Policy puts persons with a particular sexual orientation at a particular disadvantage compared with persons who are subject to the Policy but who do not have that sexual orientation.

Section 149(1)(a): eliminating discrimination etc

The leave granted between years 5-10 is due to family and private life being engaged (as enshrined in Article 8 of the European Convention on Human Rights). Leave granted on this basis allows for a NRPF condition to be imposed, not imposed, or lifted once imposed. When it is not imposed, or is lifted, it is for one or more of the reasons described.

For migrants eligible to be considered under them, the 10-Year Family and Private Life routes, provide a means whereby they can continue their life in the UK, even though they have not met one or more of the requirements for settlement. The Policy pursues legitimate aims (as set out above) and is a proportionate means of achieving those aims. It is applied on a case-by-case basis with consideration of the information and evidence provided by the individual applicant, and any representations by an applicant are given careful consideration. In overall terms, the Policy.

In relation to s.149(1)(a) ('due regard to the need to eliminate discrimination, etc'), s.29 does not apply to discrimination based on age (so far as relating to persons under 18), nationality, and ethnic or national origins when done by a relevant person in the exercise of functions exercisable by virtue of the Immigration Acts.

Nonetheless, we have considered in depth the particular the situation of British citizen children, and in particular black British children, of migrant parents under the Policy, as raised by external stakeholders. However, there is a material difference between the circumstances of two sets of British citizen children; namely those whose parents are within the scope of the Policy and those whose parents are not. The treatment in question is treatment under the Policy and that is treatment which is applied is to the parent and is based on the parent's immigration status. The difference in impact on these distinct groups of children is therefore justifiable because of the difference in the immigration status of the parents, and because the policy itself is pursuing a legitimate aim in a reasonable, proportionate and objective way. We add to the discussion of this topic on page 16 below. Moreover, such children do in fact benefit from the way the Policy operates to the extent that parents with children are more likely to have the NRPF condition lifted, or

not applied, than adult applicants who are not parents. Moreover, the revised application form now has a particular place where grounds relating to the particular needs of a child and the parents' low income can be identified.

The impact of the Policy on children whose applications are not linked to those of a parent has also been considered using data available when the policy was introduced and by an in-depth review of recent cases. Available data at the time of introduction in 2014 on how the Policy operates in relation to children in the UK is in the section above dealing with age. This showed that the proportion of under-18s where the NRPF condition code was not imposed or was lifted was higher (17%, 69) than any other age group. The available data relates to children who are the lead applicant and does not cover children who are a dependant on their parent's application.

The question of the impact on children was also considered in the 2019 in-depth review conducted by the Home Office. In that exercise data was collected on applications where a child was included. The findings are included further down in this section.

The review found that applicants with children were more likely to have the NRPF condition lifted than applicants without children. 46% of change of condition applications were made by applicants with a British child. Applicants with children tended to be women, and those without children tended to be men.

There is a material difference between the circumstances of British citizen children who are and British children who are not within the scope of the Policy. The treatment in question is treatment under the Policy and that is treatment which is applied is to the parent and is based on the parent's immigration status. The public interest in ensuring that migrants wishing to enter and remain in the United Kingdom be financially independent applies equally to those whose children are British citizens and to those whose children are not British citizens. The comparison with British citizen children of parents who are British citizens, or who have settled status, is misplaced. Those who are being treated by the immigration system are the parents who are not British citizens nor with settled status, but who are subject to immigration control. It is to these that the immigration system applies and who receive the treatment of having, or not having, a NRPF condition on their leave.

The difference in impact on these distinct groups of children is therefore justifiable because of the difference in the immigration status of the parents, and because the policy itself is pursuing a legitimate aim in a reasonable, proportionate and objective way. In fact, there is evidence that the Policy is less likely to affect adversely a British citizen child, when compared with a non-British migrant child. If a child of a migrant with NRPF is a British citizen, their other parent is likely not to be subject to immigration control, and to have access to public funds. An in-depth review conducted by the Home Office in 2019 asked 'are children listed in the application?' and collected data on that point. The results are described below.

While, ordinarily, where a child of a migrant with NRPF is a British Citizen, their other parent is likely to have access to public funds, there will be situations in which the parent who *does* have access to public funds is no longer providing for the child. This would place that British child on an unequal footing compared to other British children. The difference in treatment, though, is not based on the child's national origins but on the immigration status of the parent caring for the child. If, in individual cases, the personal circumstances involved meet the Policy criteria for one or more of the exceptions, the NRPF condition will not be imposed, or will be lifted. The needs of the child might also be met through the operation of section 17 of the Children Act 1989, under which accommodation and financial support can be provided by the local authority (see below).

In all the circumstances, the application of the NRPF condition with respect to those who do not fulfil the criteria for the lifting of the NRPF condition is, *prima facie*, considered to be the justified and proportionate consequence of the lawful objectives pursued by the Policy.

In the course of 2019, the Home Office conducted an in-depth review of 280 cases where applicants had requested to have the NRPF condition lifted. This was considered important because even if not discriminatory, the policy in practice has a part to play in preventing children being subject to a situation of destitution. In that exercise 'Are children listed in the application?' was a data point gathered in the review.

The review found that 46% of change of condition applications were made by applicants with a British child, and that the grant rates for applicants with children were significantly higher than for applicants without children. The grant rate for women with children was also much higher than the grant rate for men with children. This latter occurrence could be explained by various factors, including that women were more likely to be in lower paid jobs.

We have also considered whether the Policy complies with the Secretary of State's duty under s.55 of the Borders, Citizenship and Immigration Act 2009 to make arrangements for ensuring that, in the exercise of functions in relation to immigration, asylum or nationality, those functions are discharged having regard to safeguard and promote the welfare of children who are in the United Kingdom.

The Policy provides protection for children who are in a family unit which is, or would be rendered, destitute, or which would foreseeably become destitute or there are particularly compelling reasons relating to the welfare of a child of a parent in receipt of a very low income. This can apply due to the parent's very low income, even though in the particular case their essential living needs are met and that they have adequate accommodation. Any adult unable to provide for their child's basic living needs or adequate accommodation (or any child applicant unable to do the same themselves) will qualify to have the NRPF condition code not imposed, or lifted, under the Policy.

Not everyone will need to meet this threshold before being granted a change of conditions, for the Guidance gives caseworkers the discretion to take into account exceptional circumstances relating to the applicant's financial circumstances.

Following concerns raised about the impact of NRPF on children, the Home Office is strengthening the guidance for caseworkers on this point. The application form now has a particular place where grounds relating to the particular needs of a child and the parents' low income can be identified. We are also delivering training to caseworkers processing these applications to help them foresee when applicants and any children may be at risk of destitution if the NRPF condition is **not** lifted.

It is possible that child lead applicants are more likely to meet the terms of the policy than children in families. However, in a family application the individual circumstances of every individual, regardless of their age, will be taken into account. Thus, anyone who meets the terms of the Policy exceptions will have the NRPF condition code not imposed or lifted. It is therefore well within the scope of the decision making for an applicant to have the NRPF condition code not imposed or lifted on the basis of their individual circumstances, and those of their dependent family members. In making this assessment, any representations made by the applicant would be given careful consideration.

The finding in the 2014 data that the proportion of under-18s who have the NRPF condition code not imposed or lifted is higher than any other age group, and the subsequent finding in the 2019 data that applicants with children were more likely to have the NRPF condition lifted than applicants without children, is a likely indication that the Policy is providing appropriate protection for this group. The Policy from the outset has been formulated so as to allow consideration of each applicant's individual circumstances, including those of any child or of any dependent children.

Section 17 of the Children Act 1989 is a distinct form of support that is available in respect of a child. To be eligible for such support a child has to be assessed by the local authority according to a defined framework and regarded as a child in need. Such a child may be provided with accommodation, for instance if the accommodation the child occupies is unsuitable, and with financial assistance. The parents of the child can be included in such support if they and the child are to remain together as a family unit.

We have also been informed anecdotally that many children of parents without recourse to public funds are supported under s.17 of the Children Act 1989. This can allow the parents to receive support too but is clearly less satisfactory than the parents being granted access to public funds in the first instance, which is in fact a more normative alignment of publicly funded support. We are planning to make this clear in our guidance (referred to at Page 1 above) whilst still maintaining the ability of the local authority to be the provider of support if, and when that is the genuinely appropriate solution

where a child is involved. Whilst s.17 is targeted in a different way, at the child, for instance, and not at the parent, the Home Office will continue to draw the inference that without this support the family unit would be at risk of destitution, and no separate assessment of the family's financial circumstances will be required in order for the No Recourse to Public Funds condition to be lifted or not imposed.

Home Office policy is that, if a child and his or her parents are being supported with accommodation and essential living needs by a local authority, then there is no need for their circumstances to be assessed again for the purposes of access to public funds. The Home Office view is that, although the family are not destitute due to the support that is being provided, the correct inference to be drawn is that without this support the family would be destitute or at risk of destitution. The Home Office requirement to assess an applicant against the destitution/at risk of destitution criteria is waived in these circumstances.

On the other hand, it is not Home Office policy to require a family with children to seek and to have been granted local authority support in order to qualify to have the NRPF condition lifted, or not imposed. Even so, it is not uncommon for a family that is receiving s.17 support also to apply to have the NRPF condition of the parents changed. This is an appropriate recourse and Home Office policy is to endeavour to respond to such applications, when all the relevant information is provided, as quickly as possible.

The work carried out in 2019 showed that when applicants were broken down into female and male, with children and without children, the highest grant of recourse to public funds was found to be to female applicants with children and the lowest to male applicants without children. Whilst this may be an indication that the operation of the policy is not directly unfavourable to children, some further consideration is needed.

For instance, stakeholders have suggested that in practice the policy has a disproportionate impact on black single mothers of British children. It has not been possible to find evidence to support this concern in terms of the requisite representative statistics to conduct a meaningful comparison. The Policy applies to single mothers of British children lacking the requisite immigration status, regardless of their colour. Nor is there evidence that the imposition of the condition of NRPF, when imposed, impacts distinctly upon a person depending upon their colour.

The Policy is required to have regard to the duty to safeguard and promote the welfare of children and we are seeking ways of reinforcing how this is given effect by decision makers⁴. For instance, by reflecting within the guidance that mothers with small children may be unlikely to spend enough time working as to meet the costs associated with adequate accommodation

⁴ Section 55 of the Borders, Citizenship and Immigration Act 2009 places on the SSHD a duty to take account of the need to safeguard and promote the welfare of children when carrying out immigration, asylum and nationality functions.

and essential living needs. The application form, too, is being amended so that there is a specific question as to whether access to public funds is required in order to meet the needs of any children involved due to the parents' low income. Through a combination of making the application form and process more straightforward and greater emphasis on the s.55 duty's role in preventing destitution, we anticipate being able better to address the needs of children in a non-discriminatory way whilst maintaining the chief aim of the Policy.

By pursuing the legitimate aims set out above, using the proportionate means of the Policy, the available evidence indicates that the Policy helps eliminate discrimination, harassment, victimisation that is prohibited under the Equality Act 2010, because it provides a route to settlement which strikes a fair balance between the interest of an individual applicant and her family members on the one hand and the interests of society on the other hand.

Section 149(1)(b): advancing equality of opportunity

A public authority must, in the exercise of its functions, have due regard to the need to advance equality of opportunity between people who share a protected characteristic and those who do not. Some groups of people who share a protected characteristic, like race or sexual orientation, may suffer a particular disadvantage or have particular needs. The public sector equality duty means public authorities must think about whether they should take action to meet these needs and/or reduce inequalities. In doing this, public authorities are allowed to treat some groups more favourably than others.

Section 149(1)(b) does not apply to the protected characteristics of age, race (so far as relating to nationality or ethnic or national origins), religion or belief when an immigration function is being carried out.⁵ Nevertheless, in designing and reviewing the policy we made efforts to minimise disadvantages suffered by persons who share a relevant protected characteristic. For instance, we have taken into account that some protected characteristics may have the effect of making it more difficult to seek employment and provide for accommodation for self and dependants, and/or provide for essential living needs. Gender, disability and pregnancy are among the factors that require a greater degree of scrutiny from caseworkers before deciding whether to impose, or lift, the NRPF condition. These are dealt with in the sections above.

In addition, the Policy is intended to be applied in order to prevent destitution and there is within it the means of ensuring that individuals with a protected characteristic can achieve a viable degree of equality of opportunity.

⁵ Schedule 18, Section 2 of the Equalities Act 2010: "Public Sector Equality Duty: Exceptions."

Section 149(1)(c): fostering good relations

Having due regard to the need to foster good relations between persons who have a relevant protected characteristic and persons who do not share it involves having due regard to tackling prejudice and promoting understanding between those who have a protected characteristic and those who do not. The Policy treats persons differently on the basis of the applicant's immigration status. That different treatment of those who do and those who do not have leave with a NRPF condition imposed in accordance with the Policy fosters good relations between those who have different immigration status, or (other) relevant protected characteristics, by pursuing the legitimate aims explained above and accepted by the Supreme Court in *R (HC) v Secretary of State for Work and Pensions* [2017] UKSC 73 [2017] 1 WLR 1486 at [32], for it provides a viable route to settlement which strikes a fair balance both between different classes of migrants and between migrants and British citizens and taxpayers. In turn, the integration thereby facilitated serves to foster good relations between persons sharing particular characteristics impacted by the Policy and those who do not.

6. Conclusion

The imposition of a NRPF condition on the grant of limited leave is a fair and practical way of ensuring that migrants are financially able to support themselves and their dependants without the country's limited resources, provided by its ordinary residents, being overwhelmed or suffering deficit through incoming migration. It is lifted, at the latest, at the point where the migrant achieves settled status.

Any negative impacts of the Policy are mitigated by appropriate measures. The position that it is for the applicant to supply all the necessary evidence still stands but, in recognition of the fact that some applicants may have the information but may not have supplied it, for whatever reason, we have since February 2019 been writing out to the customer requesting information missing from the application. And individuals whose applications for leave to remain have been granted with no recourse to public funds may subsequently apply for the condition to be lifted using a Change of Conditions application process which is free of charge.

Evidence requirements

The current evidence requirements have been described as complex. We have also been told that the vulnerabilities faced by applicants can make it difficult for them to obtain evidence. For instance, single mothers who are fleeing domestic violence, may not have a bank account and may not be able to evidence payments for accommodation if these were covered by an estranged family member. The Change of Conditions application form has now been changed. Since 3 April 2020 it has been available on-line and has

contained space for free text entries so that those who are genuinely unable to provide such evidence can explain this in their own words. The guidance is also being amended to reflect this. The initial application, for further leave, can also be made online.

Publication of monitoring data

Local authorities in particular have expressed an interest in being able to access reliable data concerning the number of individuals and families with children who are living in the local authority area, and who are granted leave to remain with NRPF. They view this as helpful:

- to inform homelessness strategies;
- to help social services' departments to plan services;
- to assess the impact on schools and other local services; and
- to ensure that information about entitlements, such as for example early years education, can be properly disseminated.

Still others have stated that they would like to see reliable data in order to monitor the delivery and impact of the Policy. Suggestions about data to be disseminated have included data on the reasons for the application; data on the number of child applicants, and the number of child dependents in applications, as well as any protected characteristics.

We want to find a way of providing this kind of information. But there are difficulties in doing this. For a start, the information will have to come from a data base of live cases that is updated when new cases are resolved or new stages. This can mean that there are variations in data extracted according to the same definition because new cases have been added or old cases removed based on the facts of those cases. This can give rise to misunderstanding unless accompanied by an explanation each time the data is used. There are also concerns within the Home Office at the amount of data that is shared informally with stakeholders and partners and that becomes circulated without adequate explanation. Work on resolving these issues is currently being taken forward.

These developments are intended to reflect a more particular and up to date application of the underlying policy, the operation of which requires decision makers to consider the applicant's individual circumstances, including any exceptional circumstances involving the welfare of children. The PSED is an ongoing duty, so this will be kept under review with particular attention to any need to keep staff training up to date.

7. Review date

Ongoing.

8. Declaration

I have read the available evidence and I am satisfied that this demonstrates compliance, where relevant, with ss.29 and 149 of the Equality Act 2010 and that due regard has been made to the need to: eliminate unlawful discrimination; advance equality of opportunity; and foster good relations.

SCS sign off: Miv Elimelech

Name/Title: Dr Miv Elimelech, Deputy Director.

**Directorate/Unit: Asylum and Family Policy Unit,
BICS Policy and International Group.**

Lead contact: Benjamin Horwell

Date: 17 April 2020

For monitoring purposes all completed PES documents **must** be sent to the PSED dedicated inbox; PSED@homeoffice.gov.uk

Date sent to PSED Inbox:

Annex A – case sample spreadsheets



CoC Working Data
Spreadsheet.XLSX



Unredacted Official
Sensitive CoC case list



Unredacted Official
Sensitive CoC working



Unredacted Official
Sensitive Weekly char

Annex B – stakeholder engagement document



Stakeholder
Engagement Document

Annex C – further details of the evidence base

Data on No Recourse to Public Funds

It is important to look not only at the terms of the Policy but also at the way that it is applied. The policy formed part of the Immigration Rules prior to April 2015 but the criteria governing the circumstances in which it would be lifted or not imposed was not included in the rules. This was subsequently changed and from 6 April 2015 the criterion of destitution was incorporated into the Immigration Rules.⁶

Thus, the PES of April 2015 considered data on protected characteristics available at the time. At that time substantial data was available on the

⁶ The relevant Immigration Rules in force before 6 April 2015 stated that applicants will normally be granted a certain period of leave to remain (30 months) and that this will be subject to a NRPf condition unless the decision-maker considers that the person should not be subject to such a condition. On 6 April 2015 the policy was given expression in the Immigration Rules. The Rules since then have stated that leave will normally be granted subject to a NRPf condition unless the applicant has provided the decision-maker with (i) satisfactory evidence that the applicant is destitute as defined in section 95 of the Immigration and Asylum Act 1999, or (ii) satisfactory evidence that there are particularly compelling reasons relating to the welfare of a child of a parent in receipt of a very low income. The immigration Rules provide that the Secretary of State may also exercise discretion not to impose or to lift the NRPf condition if the applicant has established exceptional circumstances in their case relating to their financial circumstances which, in the view of the decision maker, require the NRPf condition not to be imposed or to be lifted. Destitution is defined throughout in a way consistent with the provision of support to asylum seekers and their dependants under section 95 of the Immigration and Asylum Act 1999.

protected characteristics of age, race, religion and sex was available. We were not able to obtain data on disability, gender reassignment, pregnancy and maternity, or sexual orientation because these characteristics are not recorded on our system.

The data provided are displayed below and show the number of lead applicants (not including their dependants) who were granted leave to remain under the 10-year family and private life routes under the Immigration Rules in a period lasting from 1 January 2014 to 31 December 2014. This furnished a snapshot of the operation of the NRPF policy. The data are split between those granted leave on code 1 (which imposes the no recourse to public funds condition) and code 1A (which does not impose the no recourse to public funds condition).

The data record initial case outcomes which were dispatched (meaning the Home Office decision was posted to the applicant or their representative) during 2014. This means that they include applicants who applied on the basis of family and private life, and also those who did not but were nonetheless granted leave on this basis. They do not include applicants who were originally refused leave in this category but were granted at a later date, such as following an appeal.

The data contain 11,046 cases granted under the 10-year family and private life routes from 1 January 2014 to 31 December 2014. Of these cases, the majority (92%, 10,213) were granted leave with no recourse to public funds. In the remaining 8% of cases (833), the no recourse to public funds condition code was not imposed or was lifted.

Notes on the data

- This data has been provided by and assured by the Home Office Performance Reporting & Analysis Unit.
- They are subject to change.
- In case of a need for technical queries, we state here that the data is based on decision despatch date, lead cases only, for outcome codes 1000175,1000275,1000375,1000376, Stats categories U3,4,5, condition codes 1 and 1A, where 1 represents the NRPF condition code and 1A represents the non-imposition or lifting of the NRPF condition code.
- The following analysis was taken from the spreadsheet tabs specifying figures for sex, age, nationality and religion.
- The tables contain the NRPF and RPF acronyms. In this context “NRPF” means no recourse to public funds where this condition code was imposed on the grant of leave, and “RPF” means recourse to public funds, meaning that the no recourse to public funds condition code was not imposed in that grant of leave or was lifted.

In addition to this data analysis the Home office has carried out more recent work and, in the course of 2019, carried out an internal review of the operation of the NRPF application and decision-making process in order to update its

assessment of how they met the Public Sector Equality Duty test. As part of the review, a file analysis was conducted of sample cases.

The main finding was that the grant rate for initial applications was between 60-65%, rising to 70% for second applications, leading to an overall grant rate of over 80%. In cases where the applicant was subsequently informed of exactly what evidence to submit this rose to 95%. The main reason for refusal of an application was found to be insufficient evidence, with over half of refusals being for that reason. It was also accepted that in a number of cases there had been the possibility of identifying destitution at the time of the applicant's most recent immigration decision. As a result, the following changes are in the process of being introduced:

- Clarifying the evidence requirements to ensure that applicants have the best chance of success.
- Revising the policy around evidential flexibility and developing a policy whereby the Home Office writes out for further evidence instead of refusing the application at the first hurdle.
- Providing more detailed training for Family caseworkers to make sure that they consider destitution when making Family / Private Life or Leave Outside the Rules decisions.
- Introducing an assessment of likelihood of destitution in the near future when the applicant:
 - is switching routes into Family / Private Life or Leave Outside the Rules, or
 - has previously had recourse to public funds or a fee waiver, or
 - is currently in receipt of public funds.

Discussion with caseworkers

Further to the data collected in 2015, we have conducted discussions more recently, in 2019, with caseworkers to seek their views on the different kinds of applications they deal with.

As already explained, the Policy forms part of an overall framework in the Immigration Rules which protects the economic well-being of the UK by requiring that applicants have a level of income that prevents them needing support from welfare benefits. An adult migrant applicant for leave to remain under the parent or partner route, whether the parent of a British citizen child or not, will always be either subject to the NRPF condition or in the position of needing to demonstrate why it should not be applied in their case. In discussion with caseworkers we found that quite often applications were

rejected on the basis that the information provided was incomplete and did not demonstrate a need for access to public funds.

As a result of these discussions a modified way of dealing with applicants who may submit incomplete information has been introduced. Whereas these were previously likely to be refused on the basis of the incomplete information, a process has now been introduced whereby the case worker will write out for the missing information or for information that is equally relevant. This aims to ensure that those with incomplete personal records are not automatically excluded from the application process.

Discussion with stakeholders

Views on the NRPF policy have been obtained at meetings with stakeholders through a sub-group organised by Coram Children's Legal Centre. Meetings in 2019 were held on 31st January; 22nd May; 18th July; and 19th September. A meeting planned for March was postponed. A meeting was also held on 21st January 2020. Subsequently it was decided that their views on the changes being implemented as a result of the Review should be sought through a formal stakeholder engagement process. These views were formally invited in a stakeholder engagement document that circulated to them on 27 January 2020. The questions asked and the responses provided can be summarised as follows:

Question 1. Should we prioritise the evidence to be submitted in this way with bank statements and proof of payment for accommodation being openly described as the most acceptable, and other documents having less weight?

The majority of stakeholders welcomed steps to clarify the evidence required but were reluctant to see some documents having more weight than others because in many cases production of documentary evidence depended upon the good will of third parties. For instance, where accommodation or financial support was provided informally by family or friends without rental or tenancy agreements,

Question 2. Views were sought on the current version of the form used when applying for Change of Conditions.

Support was expressed for simplification of the language used in the form. General concerns were expressed about digital forms such as the lack of ability to see if an issue would be dealt with more fully later in the form. Views were divided on whether more information about children should be captured. Some thought it should, but others felt that simply including children on the application form should create a presumption that they had needs that could only be met by access to public funds, not least to prevent them falling behind the children of settled parents.

Question 3. Views were sought on whether it would be easier for applicants if they were invited to an interview to explain their circumstances personally.

Stakeholders could see the aim behind such an approach but were concerned as to how it would work in practice. They could not envisage an interview that did not require documentary evidence to be produced in which case a request to provide it by post would surely suffice. They were concerned that the interview might be used to discover information relating to immigration status, or previous applications, or illegal working leading to reprisals that would outweigh any benefit in attending.

Question 4. Stakeholders were invited to note the wish to provide information on the overall number of applications made and granted, and the number made and granted involving children and the difficulties around that.

Stakeholders expressed a wish to see regular published information of this kind and could not see why the Home Office should be concerned about providing it, even if the data was audited to a lower standard than the published statistics. They felt that the reporting of such data was the only way of establishing whether the NRPF policy was working properly and that key groups were not being discriminated against.

Question 5. Stakeholders were asked whether an adverse decision in these cases should be open to challenge or review, in line with practice in other areas of decision making such as Leave to Remain decisions.

Stakeholders were cautiously supportive of this proposal, saying mainly that they required more detail as to how it would work in practice before offering detailed comments, for instance would the scope be restricted only to information previously provided or would it be open to fresh information. Some also queried whether it would simply add an element of delay to reaching a final decision, or whether making a new request with fresh information might be more useful to applicants.

Question 6. Impact on British citizen children

The Home Office is aware of views held by some stakeholders on this topic and felt that this should be acknowledged in a consultation document sent to them. Many stakeholders are of the view that the NRPF policy, although applied to migrant parents, affects the British citizen children of those parents when compared to other British citizen children. Views were expressed that the parent's (which was most often the mother's) immigration status should not be determinative of whether one British child can access benefits (including Child Benefit) and another British child cannot. The Unity Project provided views on the impact of this aspect of the policy on black British children.

Question 7: Whether the need for public funds should be assessed at the point when Leave to Remain is requested.

Stakeholders welcomed this proposal. They agreed that if more could be done at the point of making an immigration decision to assess whether the NRPF condition needed to be applied, or if it could be not applied in appropriate cases, then that would save the need for the applicant to make second, separate application. They were also of the view that such an assessment should take place if the application for Leave to Remain indicated that support was being provided by a local authority children's or adult services.

Question 8: Stakeholders were asked whether all casework decisions on Change of Conditions applications should be subject to review by a more experienced member of staff,

By and large stakeholders were content to leave this as a matter for the Home Office in its management of casework. Their main view was that decisions should be made more quickly than at present and, comments on the proposal included "anything that prolongs the destitution that people affected by this policy have to suffer is to be avoided". Subsequently some stakeholders expressed concern about the consistency of decision making.

The Home Office is responding to this consultation as follows:

1. The evidence required from applicants is being clarified and more flexibility in assessing the information provided is being introduced.
2. The application form has been being reviewed and simplified with more space for applicants to explain if they do not have access to all the evidence and documents required.
3. Some applicants are being invited to personal interviews and the processes around this and the relevance of the interview for immigration status will be clarified.
4. The dissemination of data about applications is being considered.
5. A process whereby applicants can have a review of a decision not to grant public funds has been introduced.
6. Training has been introduced to equip those making relevant Leave to Remain decisions with the skills to assess the need for access to public funds. Applicants will still have to indicate that they wish this assessment to take place.
7. The concern about the impact on some British citizen children has been noted but, as explained on page 17 above, does not come within the scope of the equality duty, and no change is being considered. A more specific consideration of the impact on all children will be introduced to ensure that the obligation under the s.55 duty is not overlooked.

8. The proposal that decisions should be reviewed by a senior case worker before being issued is not currently being pursued.

Annex D – Recommendations and further work from reviewing the NRPF policy

	Recommendation	Follow-up work and actions
1	Clarify the evidence requirements to ensure a greater clarity for both applicants and decision makers, leading to more first time right decisions.	There should be further clarity for applicants as to the likely outcome of an application in the light of clear requirements. We want to make the list more specific and are identifying which pieces of evidence assist with making correct decisions first time.
2	Revise our policy around evidential flexibility, increasing the number of cases where we write-out for further evidence.	We have already introduced the option for decision makers to write to applicants to seek further information. We are working to ensure this approach is standardised.
3	Provide accessible data around number of applications received and granted, especially involving children	We want to find a way of disseminating regular information to stakeholders on the overall number of applications made and granted, and number made and granted involving children. We are reviewing options to do this and will revert with further advice on this in due course.
4	Implement a form of redress for applicants by introducing an informal administrative right of appeal which is non-charged and outside the formal Administrative Review process to ensure it can be implemented as quickly as possible. This process should be kept under review and consideration should be given to bringing it under the formal Administrative Review umbrella if warranted.	Immigration status decisions (LTR, ILR etc) can be challenged either through the appeal system, or by a means of administrative review. Refusing to lift the NRPF condition cannot be challenged this way. Introducing a new system of redress is a complex, and potentially costly, piece of work but we are exploring options for an appeals mechanism proportionate to these decisions.
5	Introduce a Second Pair of Eyes check on all decisions to refuse Change of Circumstances.	This is linked to the above and will be done in parallel. The Second Pair of Eyes is used elsewhere when a refusal decision is being made but we would need to see whether it was necessary if other forms of redress were introduced
6	Conduct further study on the equality impacts of our decisions, particularly for families with British citizen children, but also males without children; and Nigerian males and all applicants from Bangladesh.	We intend to re-issue the PES so that it addresses the point relating to the impact on British citizen children. We also want to check further into application outcomes for the other groups mentioned.

7	Provide training for Family caseworkers to ensure that they consider destitution when making Family / Private Life or Leave Outside the Rules decisions.	We want to identify if more could be done at the point of making that immigration decision to assess whether the NRPF condition needed to be applied, or if it could be not applied in appropriate cases, thereby saving the need for the second, separate application.
8	Introduce a mandatory destitution consideration when the applicant: (a) is switching routes into Family / Private Life or Leave Outside the Rules, or (b) has previously had a Code 1A condition or fee waiver, or (c) is in receipt of Public Funds.	We want to amend the application forms used in these cases to incorporate a specific request to be granted access to public funds on grounds of destitution. As above, this should save a second, separate application.