

SAFEGUARDING CHILDREN FROM DESTITUTION: LOCAL AUTHORITY RESPONSES TO FAMILIES WITH 'NO RECOURSE TO PUBLIC FUNDS'

by Jonathan Price and Sarah Spencer

June 2015



COMPAS ♦ University of Oxford ♦ 58 Banbury Road ♦ Oxford ♦ OX2 6QS
www.compas.ox.ac.uk





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About the authors

Jonathan Price is a Research Officer at the Centre on Migration, Policy and Society (COMPAS), University of Oxford. Jonathan has worked in the area of NRPF service provision since 2008, including as Policy and Communications Officer at NRPF Network.

Dr Sarah Spencer is a Senior Fellow and Director of the Global Exchange on Migration and Diversity at COMPAS.

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1. Introduction

This report explores a tension between two areas of policy concerning the welfare of children: between provisions in immigration law that exclude some families from accessing mainstream welfare benefits ('no recourse to public funds') and a requirement on local authorities to safeguard and promote the welfare of any child 'in need'. It sets out the findings of a study that has investigated the challenges to which that tension gives rise, for local authorities and for the children and families concerned. From a survey of local authorities in England and Wales and of voluntary sector support agencies, eight local authority research sites and 92 interviews with 49 service providers and 43 parents (in 41 families), it finds evidence that draws into question whether the intention of the law - to safeguard children in need - is for this group of children always being met.

Section 17 of the Children Act 1989 (s17) is the duty of local authorities in England and Wales to safeguard and promote the welfare of children in their area who are 'in need' and to promote the upbringing of such children by their families. The vast majority of cases of children in need, beyond the scope of our study, are related to abuse or neglect, family dysfunction or domestic violence (Department for Education, 2014). However, s17's scope is broad and can include the provision of accommodation and financial support where families with dependent children are destitute, a destitute child being 'in need' for the purposes of s17. Administered by local authority Children's Services departments, s17 in part functions as an accommodation safety net for families who fall through the gaps of mainstream welfare benefit provision and who cannot access informal support outside statutory services.

A small but growing group whose needs are met under this legislative provision are families that are living in the UK and are destitute, but have no access to welfare benefits, including benefits related to accommodation. The disentanglement to welfare benefits arises because a parent has, as a condition of their immigration status, 'no recourse to public funds' (NRPF). 'Public funds' here is the legal term for certain 'welfare benefits' defined under Paragraph 6 of the Immigration Rules¹ and is not to be confused with publicly funded services more generally. Significantly, the support provided under s17 does not fall within the definition of a public fund so that having NRPF does not preclude those families from being considered eligible to receive it. Unusually for Children's Services departments, they do not act alone in relation to these s17 cases but need to liaise with the Home Office because of its management of the immigration status of the families concerned.

In recent years, some local authorities have seen a rise in the number of NRPF families receiving long-term accommodation and financial support under s17. The NRPF policy affects adults who are subject to immigration control so that parents in these families are from abroad, although a significant minority of their children are British citizens.²

Whilst nationals of EEA countries ('mobile EU citizens') are not affected by the NRPF policy per se, they are subject to separate eligibility criteria restricting their access to public funds. If they become destitute in the UK and have dependent children, they too may become eligible for safety net support under s17. The profile of families that are excluded from mainstream welfare benefits and receive support under s17 is becoming increasingly heterogeneous, and is explored in depth in this study.

1 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/420580/20150406_immigration_rules_introduction_final.pdf.

2 Such children may acquire British citizenship by having one British parent or living in the UK for ten years, for instance.

In spite of the increasing numbers and diversity of NRPF families being supported under s17, the statutory guidance local authorities must follow in implementing the Children Act does not include the particular considerations relating to this group of families. Local authorities must meet their accommodation and subsistence duties under s17 to destitute NRPF children and families as part of their broader s17 duties without funding from central government to account for this specific cost. Whereas the Children Act is an area of law where duties to children and families are relatively clear (and for which there is statutory guidance),³ the absence of guidance relating to the particular circumstances of NRPF families, and in some areas, adequate funding for services provided, raises the question whether local authorities are consistent in the way in which they meet their statutory obligations under s17 to the children and whether their needs are being adequately met.

Whilst the language of s17 has remained intact since 1989, the context in which it is discharged has changed considerably. Most relevant here is the interaction between s17 and immigration law and its evolving interpretation in case law; and the changing welfare needs within communities, exacerbated by the economic downturn in recent years.

In that context, the study set out to explore current local authority policy and practice in England and Wales in relation to s17 support for NRPF families and mobile EU citizen families without access to public funds (henceforth 'NRPF families'), with the research questions outlined below.

Research questions

NRPF families seeking support

- Who comprise the group of families seeking s17 services who have 'no recourse to public funds'?
- What are the factors that lead these families to seek support from local authorities?
- What welfare needs do they present?

Local authority practices

- What are the practices of local authority departments administering s17 services in relation to assessment and provision of services to children and families with no recourse to public funds?
- What are the factors which influence variation in practice between local authorities?
- What are the experiences of children and families when they engage with local authorities?
- What impact does the way in which s17 services are arranged have on such families seeking or receiving support?
- What strategies are employed by families and their advocates to access this support?

Outcomes and case resolution

- For those who have received s17 support, what have the implications been?
- What impact does the nature of the relationship between local authorities and the voluntary sector have on outcomes for families?
- How does the role of the Home Office in resolving immigration cases impact on the ability of local authorities to progress NRPF cases from temporary s17 support to a more permanent resolution?

³ Department for Education (2015) Working together to safeguard children: A guide to inter-agency working to safeguard and promote the welfare of children.

Implications for policy and practice

- What are the implications for future policy and practice at national and local levels?

In the next section we outline the research methodology, followed by a brief review of academic literature relevant to this study. In the fourth section, we provide an outline of the legal and policy framework, based on desk research of the policy literature, guidance documents and texts of primary legislation and case judgments. We then turn our attention to the profile of s17 NRPF families. The sixth section of the report looks at the relevant assessments undertaken by local authorities, the services provided by them and at the reasons for variation in practice. In section 7 we consider the outcomes for families and the role of the Home Office in progressing the immigration cases of s17 families to resolution.

2. Methodology

A mixed-method approach was adopted in this study, with qualitative data collected using semi-structured interviews in eight research sites and quantitative data through two surveys: of local authorities in England and Wales and of voluntary organisations. The geographical scope of the study did not extend to Scotland or Northern Ireland due to their having different, albeit similar, statutory duties under the Children (Scotland) Act 1995 and The Children (Northern Ireland) Order 1995, respectively). It is hoped, nonetheless, that the findings will be relevant to local authorities in those parts of the UK.

A literature review was conducted to contextualise the findings, and a substantive mapping of the evolution of relevant law and policy. In July 2013 two round table events were held in London and Manchester to consult 35 stakeholders from local and central government and from the voluntary and private sectors on our research questions and methodology. Another two round table events were held in London and Manchester in the Autumn of 2014 to consult stakeholders on our emerging findings. An Advisory Group (see acknowledgements) advised throughout the study.

Survey data

In order to maximise returns from our survey of local authorities, we divided it into two parts, first sending a basic questionnaire with four questions to all local authorities in England and Wales that have Children's Services departments: 174 in total. That basic survey, which sought information on the number of these supported families and the way in which services were arranged for this group, was sent in October 2013 to Directors of Children's Services accompanied by a letter from the researchers and from the Chair of the Association of Directors of Children's Services (ADCS) Asylum Taskforce. In the first instance, 53 authorities responded, in many cases requiring follow up emails and phone calls to clarify and complete the data provided. Local authorities that did not return the completed survey were resent it after six weeks as a Freedom of Information (FOI) request, under which they have a statutory duty to respond within 20 working days (unless refusing to provide the information on grounds stipulated in the FOI Act). FOI requests were sent to 121 local authorities.

In total, 137 of the 174 local authorities (79%) with children's services departments in England and Wales provided data for the basic survey. The high response rate was achieved in part because the survey was concise and local authorities were thus unlikely to be able to argue that it would take them longer than 18 hours to compile the information (one of the FOIA grounds for refusal). It was also because follow up telephone conversations were undertaken to explain the purpose of the research, who the particular group of families in question are, and how the information requested could easily be compiled.⁴ For many local authorities, this was the first time they had identified the NRPF service user group under their s17 duties and expenditure records.

Some local authorities did not respond to the survey and some provided data whose quality was too poor to use. The reasons for refusal or for not using the data were as follows:

⁴ A simple method of identifying the data was to isolate accommodation cost codes under the Section 17 Children Act budget and to identify the number of regular payments being made under this code. These were likely to be rent payments for NRPF families, excluding other accommodation expenditure under s17 that is more likely to be short term e.g. those due to families being assessed as intentionally homeless. Once these cases were isolated, local authorities could easily check which of the families had NRPF by looking at case records.

Figure 1 – Reasons for not responding to basic survey or reason data was not used

Reason for not responding/data not used	Number of local authorities
Data not recorded	12
Section 12 FOIA (data would take longer than 18 hours to compile)	9
Did not respond	6
Section 40 FOIA (data would identify individuals)	5
Quality of data too poor to use	4
S17 expenditure not recorded	1
Total	37

The profile of local authorities that did not respond to the basic survey broadly reflects those that did respond, if they are divided into three groups according to the estimated number of non-UK nationals (high (n=58), medium (n=58) and low (n=58)) using data from the Office for National Statistics Population by Country of Birth and Nationality Tables 2013.

Figure 2 – Basic survey: Comparing non-responding Local Authorities to responding Local Authorities using estimate of number of non-UK national residents in boroughs

	Non responding local authorities	Responding local authorities	Total
High	13	45	58
Medium	12	46	58
Low	12	46	58
Total	37	137	174

A detailed questionnaire was then sent in February/March 2014 to the first 55 local authorities that responded to the basic survey and had supported NRPf families under s17 in the financial year 2012/3. Responses were followed up with the selected sample until a broad cross section of authorities was represented in respect of four criteria: geographical location (all regions/nations represented); number of supported NRPf families (High – 12; Medium – 7; Low – 5⁵); existence of a dedicated NRPf team/worker (Yes = 12; No = 12); and party political control (Labour = 15; Conservative = 5; No Overall Control = 7). A table detailing the profile of the 24 responding authorities is included below. Whilst our sampling method for the second detailed survey takes into account this wide spectrum of criteria, one should note that any extrapolation of these figures would be on the assumption that the missing authorities and their supported NRPf families have roughly the same characteristics.

The more detailed survey included ten questions about the supported families and local authority practice, including the immigration status and nationality of parents, expenditure, child protection and length of time on s17 support. Twenty-four local authorities responded, supporting 878 families and 1561 children. This amounted to a quarter of the authorities supporting NRPf families that had responded to our basic survey and accounted for just under a third of the total number of NRPf families identified in the basic survey.

5 High/Medium/Low here are defined as those authorities supporting 21+/6-20/1-5 NRPf families, respectively.

Figure 3 – Profile of Local Authority respondents to detailed survey in Feb-Apr 2014

	Region/nation	Number of supported cases	Dedicated team	Party Political Control
Local authority 1	London	High	Y	Lab
Local authority 2	East Midlands	High	N	Lab
Local authority 3	North West	High	Y	Lab
Local authority 4	Wales	Low	N	Lab
Local authority 5	South East	Medium	N	NOC
Local authority 6	East of England	Low	N	NOC
Local authority 7	London	High	Y	Lab
Local authority 8	London	High	Y	Lab
Local authority 9	East Midlands	Medium	N	Lab
Local authority 10	North East	Low	N	Lab
Local authority 11	South East	High	N	NOC
Local authority 12	North East	Medium	Y	Lab
Local authority 13	Yorkshire and Humberside	High	Y	Lab
Local authority 14	London	High	Y	Lab
Local authority 15	South West	High	Y	NOC
Local authority 16	London	Med	Y	Con
Local authority 17	London	High	Y	Con
Local authority 18	Wales	Medium	N	Lab
Local authority 19	Yorkshire and Humberside	Low	N	Con
Local authority 20	South East	Low	N	Con
Local authority 21	Wales	Medium	N	Lab
Local authority 22	East Midlands	High	Y	Lab
Local authority 23	West Midlands	Medium	N	Lab
Local authority 24	London	High	Y	Con

An online survey of the voluntary sector was also conducted during October and November 2013, targeting organisations providing front line services to NRPf families.⁶ The survey included 23 questions exploring the kinds of services provided to NRPf families and their relationship with local authorities. A total of 105 responses were received. Nine responses were discounted because respondents were not from organisations providing front line services to families with NRPf or they did not answer enough questions.

Research sites

Eight local authorities were chosen as research sites in order to explore assessment processes and service provision in more depth, the experience of families, support provided by advocates (that is: lawyers, health visitors and civil society organisations acting on behalf of individual families) and the relationship between the actors involved. The authorities were selected on the basis of five criteria: geographical location;⁷ number of supported NRPf families in the financial year 2012/3; number of supported NRPf families relative to number of non-EU passport holders arriving between 2007-11;⁸ the existence or not of 'dedicated' NRPf services within the local authority; and political control

6 The survey was publicised to potential respondents via a number of umbrella bodies: NRPf Network; The Children's Society; Regional Strategic Migration Partnerships; Law Centres Network; and the Equality and Diversity Forum.

7 Local authorities were selected in a number of different regions and Wales. Three were selected from London due to the disproportionate number of NRPf families in the capital.

8 Using data from the 2011 Census.

of the council at the time of fieldwork.⁹ Two authorities declined to be involved after a request to participate was made. Data collected in the basic survey of local authorities were used to make the selection of local authorities on the above criteria.¹⁰ A breakdown of the relevant characteristics of each local authority is given in Figure 4. The local authority research sites are not identified in this report. In a minority of areas, it proved difficult to find voluntary sector organisations working with NRPF families. We therefore broadened our pool of interviewees to include solicitors working in the private sector and health visitors working for the NHS.

In-depth interviews were held over six months between January and June 2014. A small number of interviews were also held in a ninth local authority area, where one of the authorities disperses most of its NRPF families (that is, interviews were held there with two parents, a local authority official and a voluntary sector representative). In total, semi-structured interviews were conducted with 91 interviewees across the nine areas and with the manager of the national NRPF Network, a network of local authorities and partner organisations focusing on the statutory response to people who have NRPF. A follow up conversation was held with the manager of the NRPF Network in January 2015 to explore developments relating to the NRPF Connect database since the beginning of the project.

Within each local authority, interviews were conducted with local authority staff with differing responsibilities in relation to NRPF cases and at different levels of seniority: social workers, case workers, social work assistants, team managers, service managers and legal services. Interviews were also conducted with staff in voluntary sector organisations, with solicitors in the private sector and with two health visitors working for the NHS.

9 Political control of one of the local authority research sites changed as a result of 2014 local elections.

10 Local authorities were classified as having high or low numbers of NRPF families if the number of supported NRPF families in 2012/3 was above or below the median number from the 96 local authorities that provided data for the basic survey and were providing s17 support to NRPF families in that financial year.

Figure 4 – Numbers of interviews and characteristics of local authority research sites

	Region/nation	Number of supported NRPf families (2012/3) ¹¹	Number of supported NRPf families relative to number of non-EU citizen residents ¹²	Dedicated NRPf service?	Political control	Number interviews held			
						LA	VS ¹³	VSSU ¹⁴	LASU ¹⁵
1	North West	High	High	Yes	Lab	3	3	4	2
2	West Midlands	High	High	Yes	Lab	3	2	5	3
3	London	Unknown (estimated high)	Unknown (estimated high)	Yes	Lab	3		8	2
4	London	Low	Low	No	Con	3	8 ¹⁶	1	2
5	London	High	High	Yes	Con	3		2	2
6	Wales	Low	High	No	Lab	4	3	2	1
7	South East	High	High	No	Con	3	2	1	3
8	Yorkshire and Humberside	Unknown (estimated high)	Unknown (estimated low)	No (Panel)	Lab	3	3	1	2
9	Dispersal area ¹⁷	n/a	n/a	n/a	n/a	1	1	1	1 ¹⁸
Total						26	22	25	18

Requests were made to the Home Office to interview their case workers and policy staff about the operational aspects of their work in relation to s17-supported NRPf families as part of this study. The Home Office declined our requests to be interviewed for the study.

11 High/Low here are defined as those authorities supporting 13+/-12 NRPf families, respectively.

12 High/Low here are defined as those authorities with above and below median proportion of supported NRPf families relative to the number of non-EU passport holding residents in those boroughs as estimated in the Labour Force Survey, respectively.

13 VS: advocates in the voluntary or private sectors or NHS health visitors.

14 VSSU: parent interviewees contacted via voluntary sector.

15 LASU: parent interviewees contacted via local authority.

16 London based voluntary sector organisations were generally working London-wide with the exception of one whose remit solely covered local authority 4.

17 A small number of interviews were held in an area where one local authority dispersed its s17 families. The area was therefore not selected in the same way as the other eight areas.

18 Sourced by local authority in the dispersal area.

3. Literature review

There is a range of academic literature in the social policy and migration fields which informs our study, helpful for instance on the background to and implementation of the Children Act, the evolving relationship between the welfare state and immigration controls, and the way in which community networks are a source of support outside of the public sector.

The Children Act 1989

The Children Act 1989 was a landmark in legal history, its Section 17 a core element of what became a new direction for children's social care in England and Wales. An expression of the period's dominant political thinking on the relationship between state, family and child, the Act sought to limit the state's interference in 'family matters', shifting the focus from prevention of risk to a focus on family support and children in need. It cemented a broadening of local authorities' duties towards children to encompass the lower end of the 'hierarchy of needs' such as material deprivation, working in partnership with other agencies, notwithstanding that the primary responsibility for the care of children should lie within families (Tunstill, 1995; Statham and Aldgate, 2003).

Poverty in childhood is known to have long-term consequences, with respect to children's educational and employment outcomes, risk of low income and homelessness (Stewart, forthcoming). Income matters to children's social and behavioural development and health outcomes (Cooper and Stewart, 2013). The causes and consequences of poverty are profoundly affected by gender, and lone parents (the majority of whom are women) are at greater risk of living in poverty (Bennett and Daly, 2014).

Effective measures to safeguard children were seen as measures which promoted their welfare, addressing not only negatives in the child's life but promoting positive opportunities for development. In practice, the balance between proactive family support services and crisis driven responses was not as intended (Tunstill, Aldgate et al 2010). Social work priorities did not shift towards addressing material deprivation to the extent anticipated. The definition of 'in need' continued to be linked with risk criteria (Morris, 2005), arguably a reflection of insufficient resourcing of local authorities at the time (Tunstill, 1997). Significantly for our study, implementation of s17 was found to be inconsistent, particularly in the ways in which authorities assess the extent and nature of need within communities, how they conceptualise children 'in need' (Statham and Aldgate, 2003), and the speed at which they moved from protection-focused to safeguarding-focused practice (Tunstill, 1995).

The death of baby Peter in 2008 was the catalyst for a shift away from safeguarding and the promotion of welfare to the narrower priority of child protection (Parton 2011). At the same time, cuts in local authority budgets had a greater impact on poorer urban areas (Hastings et al, 2013), leading to a more acute need to prioritise certain services over others. Nevertheless, the broader aspiration embodied in s17 to safeguard children 'in need' remains on the statute book.

Street-level bureaucrats: how much discretion?

Between and within authorities we do know that one cause of variation in practice is the exercise of discretion by local service providers. Lipsky found that local service providers, or 'street level bureaucrats', can exert a major influence over the ways in which a policy is implemented, having a significant degree of discretion in how they treat their service users (Lipsky 1980; Hudson and Lowe, 2004: 204). One factor contributing to differing responses by staff may be differing conceptions of the relative deservingness of different clients (Van Oorschoot 2006). In defining 'children in need',

local authorities were given a means to ration access to services and, it was argued, did so in part on the basis of conceptualisations of the relative deservingness of those seeking support (Packman and Jordan, 1991).

Lipsky's work has been critiqued for underplaying the role of managerialism in harmonising practice, leaving less room for discretion (Howe, 1991); while others argue that the growth of regulation has created more space for interpretation (Evans and Harris, 2004). This suggests that it is in areas of practice which are least subject to clear guidance or monitoring that we might expect to find the greatest room for discretion: as in the application of s17 in NRPF cases.

Some perspective is offered on this debate in a migration context. Marrow (2009), considering the role of street-level bureaucrats vis-à-vis national and local politicians in relation to migrant incorporation, found that they remain true to their professional ethic and are quicker to respond to migrants' needs than politicians. In areas with more established migrant populations elected representatives had more awareness of the needs of migrant communities, in part because some elected representatives were themselves from migrant or minority ethnic backgrounds.

The use of welfare exclusions as a means of migration control has been termed the transfer of 'gatekeeping at the border' to 'gatekeeping access to services.' Van der Luen, in a study of the implementation of immigration restrictions to public services found that some street level bureaucrats bend the rules, a tendency she found in occupations with higher levels of professionalisation, such as in health and education. Occupations with lower levels of professionalization tended to comply more rigorously with the law, leading to a higher level of exclusions (Van der Leun, 2006:). The gap between policy and practice, she argues, can also simply result from lack of awareness and understanding of policy. We might therefore find some difference in practice where s17 cases are handled by trained social workers or by case workers.

Where the literature on street level bureaucrats suggests in a migration context that their exercise of discretion to promote inclusion can undermine the exclusionary intentions of central government, Chauvin and Garcés-Mascreñas (2012) have shown that state policies can themselves in this respect be internally contradictory: promoting exclusion and inclusion at the same time. Our study complements their analysis by providing empirical evidence of that tension in relation to a concrete case in the UK, the exclusion and inclusion of children and families with NRPF. In this instance, it is a tension between the exclusionary practices of the *national* state and (to an extent) inclusionary *local* state. The pressure for inclusion can be understood in part as an instance of the need to reflect a human rights ethic, enforced by the courts (Guiraudon 2000; Boswell 2007). Of particular relevance here is that rights protected by court decisions may affect welfare services provided at a local rather than at a central level. The state cannot be considered as a monolithic category. Indeed, multi-level governance and competing interests within the state forms another dimension that needs to be taken into consideration in this analysis.

Migration and the welfare state

A historical tension in Europe between openness to migration and the access it provides to welfare states led to increasingly tighter demarcation of the 'community of legitimate receivers of welfare state benefits' (Geddes, 2003:150). In turn, exclusion from welfare became a means of immigration control, a trend heightened in the 2000s in relation to asylum seekers and those with no legal status (Bommes and Geddes 2000), and most recently in its application to mobile EU citizens. Recent studies have shown how differing models of welfare state across Europe (Esping Anderson,

1993), coupled with differing models of migrant incorporation, have shaped the ways in which migrants' access to welfare support have been affected (Sainsbury, 2012). Welfare magnet theory (Peterson and Rom, 1990), which assumes an incentivising effect for migrants of the existence of the welfare state, underlies restrictive welfare policies. The assumptions underlying that theory have been empirically challenged. In the context of EU expansion, for instance, variable welfare provisions do not significantly affect migration flows (Skupnik, 2013).

The use of welfare exclusions has regularly been the focus of litigation, not least in the UK where the courts have played a prominent role, limiting the extent to which central government has been able to cut back the entitlements of those who would as a result be destitute. In the context of s17 the courts have delineated the boundaries of the responsibilities respectively of central and local government for meeting basic needs. Our study adds to this literature by demonstrating the particular dynamic relating to those whose immigration status gives them no recourse to public funds: exclusion from nationally funded welfare benefits, on the one hand, while simultaneously granting access to the local welfare state if, as a consequence, there are any children in need.

Impact of welfare exclusions on local authorities

Literature on the relationship between central and local government is beyond this study except to note that the limited resources given to local authorities to fulfil their statutory functions is a recurring theme (e.g. Tunstill, 1997; Fargion, 2007). The particular relationship between social work and the rest of the welfare state has been characterised historically as

“a tortuous one, which has required social workers to pick up the pieces after each individual or institutional crack has appeared in the universal welfare system. It might be suggested, therefore, that the history of social work since 1948 represents an accommodation to this state of exclusion from the universal welfare system.” (Tunstill, 1997:43)

There is, however, very little research that has explored this relationship in relation to the category of migrants with NRPF. A small study in 2010 focused on local authority support under s17 to NRPF families and single adults (under the National Assistance Act 1948), based on quantitative data provided by a small sample of authorities in England, Scotland and Wales. It found variation in practice, lack of statutory guidance and lack of funding for services as the key concerns of local authorities in relation to this group of service users (NRPF Network, 2010). Women victims of domestic violence subject to NRPF have been found (in studies prior to a targeted policy concession, see Section 4) to face deportation if they left their abuser but that many refugees refused access because they could not be reimbursed from public funds (Sundari et al, 2008; Anitha, 2008). Destitute, refused asylum seekers have received greater attention, research revealing a level of unmet need including homeless individuals with mental health problems and children at risk (Amnesty International UK, 2006; Crawley et al., 2011; Smart, 2009; Lewis, 2009; Taylor, 2009; The Children's Society, 2008, 2012).

There is a greater focus in the literature on statutory services for unaccompanied migrant children, services relating to children within families being comparatively invisible and under researched (Newbigging and Thomas, 2011). Our study seeks to address this gap. Newbigging and Thomas identify problems in social work practice in relation to unaccompanied children that are relevant to NRPF families, including variation in the extent to which staff discourage applications for support, differing thresholds of need applied as the basis of granting services, and staff that lack relevant training and have insufficient resources. The study also identifies good practice, including solution-focused responses, respect for cultural identity and experiences of partnership working across sectors.

The inherent tension between The Children Act 1989 and certain exclusions from s17 (Schedule 3 NIAA, see Section 4 below) has been considered, Cunningham and Tomlinson arguing that exclusions to s17 affecting parents were designed to threaten family separation and consequently force parents to comply with removal from the UK: *“Like the Poor Law, where part of the regime of humiliation was for children to be separated from parents, this proposal envisaged the use of the same ‘pressure of the most painful kind’ as a social lever to secure acquiescence.”* (Cunningham and Tomlinson, 2005)

Support from networks

Understanding the situation of families prior to receiving s17 support and the factors that lead to their presenting to local authorities as destitute requires us to look at their relationship with friends, family, faith and ethnic communities, particularly for those whose immigration status makes them dependent on others to negotiate everyday life.

Research on migrant networks of kin and co-nationals finds they create social capital that facilitates integration within communities, through access to accommodation, informal support and jobs. This is equally true for those with irregular status, kinship networks facilitating integration through provision of accommodation, information on ways of negotiating life with irregular status, and integration into the informal economy (Engbersen, Van San and Leerkes, 2006; Castles and Miller, 2009; Cvajner and Sciortino, 2010). The presence of children within networks strengthens families' links with communities, and their immigration status is less likely to restrict access to services (such as education). Significantly, it has been found that households that include children reduce the likelihood of return (Haug, 2008).

Research on irregular immigration status has found that individuals' status evolves from one status to another as visas expire, applications are pending and formal decisions awaited, are made and later revised (Jordan and Düvell, 2002; Ruhs and Anderson, 2010). The categories of 'legality' and 'illegality' constructed through immigration law also diverge from people's experience in daily life:

“On a day-to-day basis, their illegality may be irrelevant to most of their activities, only becoming an issue in certain contexts... Much of the time they are undifferentiated from those around them, but suddenly... legal reality is superimposed on daily life” (Coutin, 2000 pg. 40)

When cracks arise in support networks they can create or contribute to crises that result in families becoming destitute. The role of the voluntary sector in providing advice and support at this juncture can be crucial but its capacity, in the UK and across Europe, is limited and not always well adapted to the scale and nature of the needs that destitute migrants present (Children's Society, 2010; Phillimore and Goodson 2010; Regioplan, 2014).

4. Legal and policy framework

In this section we explain the relationship between the law and policy relating to families with NRPf and Section 17 Children Act 1989 (s17), based on scrutiny of the primary legislation, case judgments and guidance on implementation of the law and on further desk research on the policy literature.

Section 17 Children Act 1989

S17(1) places a duty on local authorities *'to safeguard and promote the welfare of children within their area who are in need; and, so far as is consistent with that duty, to promote the upbringing of such children by their families, providing a range and level of services appropriate to those children's needs.'*

Under s17(10), a child is 'in need' if

- a. *he is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him of services by a local authority under this Part;*
- b. *his health or development is likely to be significantly impaired, or further impaired, without the provision for him of such services; or*
- c. *he is disabled,*

and 'family', in relation to such a child, includes any person who has parental responsibility for the child and any other person with whom he has been living.

The Act specifies that services can include the provision of accommodation and assistance in kind or in cash (s17(6)) and clarifies that the development of the child means not only physical development but also intellectual, emotional, social and behavioural (s17(11)).¹⁹ While children in need are the focus of s17 to ensure their safeguarding, the support is provided to promote their upbringing within their family.

Circumstances under which s17 may normally be used to provide accommodation to families include those who have been assessed as 'intentionally homeless' by local authority housing departments, or temporary gaps in the provision of welfare benefits. Families may be referred to Children's Services for emergency support where no alternative support in the private sector (from friends or family, for instance) is available. Such support is normally provided on a temporary basis. S17 is intended as a safety net to meet families' most basic needs and/or as a bridge until they access mainstream welfare support. As destitute children are considered to be 'in need' for the purposes of s17, this provision is intended to ensure that no child in England or Wales is, to the letter of the law, destitute.

For families with NRPf, however, there is no route into mainstream benefits unless they regularise their immigration status. Crucially, therefore, if they are destitute and remain in the UK, receipt of support under s17 can prove to be on a longer-term basis. S17 is not included within the definition of a 'public fund' (see below) so that having NRPf does not preclude families from accessing s17 support. A child that is destitute constitutes a child in need for the purposes of s17.²⁰

¹⁹ <http://www.legislation.gov.uk/ukpga/1989/41/section/17>.

²⁰ *R v Northavon District Council [1994] AC 402* and *R (G) v Barnet LBC [2003] UKHL 57*.

s17 does not spell out clearly when the duty on a local authority to assess an individual child/family is triggered. There is some flexibility in the assessment process as stipulated in the guidance for assessing children in need (Department for Education, 2015). A Child in Need Assessment must be completed within 45 days, but a local authority can elect to complete this in two stages (initial and core assessments) or as a single assessment. More detail about the assessment process is given in Section 6. An assessment of destitution is likely to be a significant element of the Child in Need Assessment for NRPF families presenting to local authorities as destitute. The statutory guidance does not include information on how to assess destitution; however, some pointers to what might constitute destitution under s17 are given under s95 Immigration and Asylum Act 2002 (IAA), under which (in another but, arguably, similar context) the Home Office may provide support to asylum seekers “*who appear to be destitute or are likely to become destitute within a 14 day period. Applicants are deemed to appear destitute if:*

- *They and their dependants do not have adequate accommodation or any means of obtaining it (irrespective of whether other essential living needs are met); or*
- *They and their dependants have adequate accommodation or the means of obtaining it, but cannot meet essential living needs.”²¹*

An elaboration of ‘essential living needs’ is given in the case *Refugee Action v SSHD [2014]* in which it was judged that cleaning materials, nappies, non-prescription medication and the means to maintain a minimum level of participation in social, cultural and religious life, were among ‘essential living needs.’ Some more recent test cases have considered what support might be provided by local authorities under s17 to prevent a child from being ‘in need’ and therefore provide some indication of what might constitute destitution or not (see below under section: Level and type of support provided under s17).

With no clear definition of destitution, however, and a lack of official documentation that enables individuals to prove the availability (or otherwise) of support provided through informal networks, there is considerable space for interpretation in how destitution is defined. The case of *R (MN) v Hackney LBC [2013]* is illustrative on the point of burden of proof of destitution, in which the judge ruled that where s17 claimants did not provide sufficient information, councils could draw ‘adverse inferences’ on such lack of information.

No Recourse to Public Funds

‘Public funds’ is a legal term that refers to certain welfare benefits defined under Paragraph 6 of the Immigration Rules, to which those with the NRPF condition attached to their immigration status cannot access. It should not be confused with publicly funded services more generally (for example, education or NHS services). Public funds currently include income-based job seeker’s allowance, housing benefit, child benefit and tax credits. A full list of public funds can be found in Appendix I. It does not include s17 Children Act. Local authority Housing Departments assess eligibility for housing-related public funds. Where they assess that a family with dependent children is not eligible for this support because their parents have NRPF they are required to refer the family to Children’s Services for an assessment of need under s17 if it appears that the child may be in need.

Section 115 Immigration and Asylum Act 1999 stipulates that adults will have NRPF if they are subject to immigration control. People who are subject to immigration control include those whose permission to be in the UK is subject to a visa, including those joining spouses, visitors, those coming

21 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257414/eligibilityandassessment.pdf.

to work in the UK, students and family members. NRPf also applies to asylum seekers and refused asylum seekers; to those who have overstayed their visa and to those who entered the UK without permission.

People who *do not* have NRPf include those who have acquired citizenship, permanent residence, indefinite leave to remain (ILR), limited leave to remain (LLR) where granted *with* recourse to public funds, refugee status, humanitarian protection or discretionary leave. Only adults aged 18 or over can claim public funds, even if they are child-specific public funds, therefore British children whose parents are from outside the EEA are effectively excluded from public funds, even though children are never personally subject to the NRPf condition.

Mobile EU citizens do not have NRPf because they are not 'subject to immigration control' as defined under s115 IAA. However, in order to access public funds for those who are economically inactive, they must satisfy the 'Habitual Residence Test' (which includes a 'Right to Reside Test'). This means that in practice some mobile EU citizens will not be able to access public funds and find themselves restricted in the same way as those who have NRPf. British nationals do not have NRPf, however they must also pass the habitual residence test in order to be entitled to public funds. This mostly affects British nationals returning from living abroad for long periods of time. British nationals do not need to pass the 'right to reside test.'

Certain people fleeing domestic violence who have NRPf as a condition of their leave to remain in the UK may have that condition overturned for a brief period if they meet certain criteria. The 'Destitution Domestic Violence Concession,' established in April 2012, applies to people who have been given leave to remain in the UK as a spouse, civil partner, unmarried or same sex partner of a British citizen. Where that relationship has broken down due to domestic violence they can apply for Indefinite Leave to Remain (ILR) under the Domestic Violence Rule (DVR), a specific immigration route for this particular group of people. During the period in which the Home Office is considering their DVR claim, people who fall into this category and are destitute will be given temporary leave allowing them to apply for public funds that will cover their costs of staying in a refuge. Prior to the DDV concession and its predecessor, The Sojourner Project (operational from 2009-2012),²² destitute children and families would have been eligible for s17 support whilst their DVR claim was being considered by the Home Office. People fleeing domestic violence who are in the UK with other forms of immigration status (e.g. work visa) are not eligible to apply for ILR under the DVR, and if they have NRPf they may be eligible for s17 support.

In July 2012, the Home Office introduced a policy under Family Migration Rules that allowed Limited Leave to Remain (LLR) granted under certain immigration routes²³ to be subject to the NRPf policy unless there were exceptional circumstances under which access to public funds would be granted. For families receiving s17 support who were granted LLR under these immigration routes, they could continue to be eligible for s17 support and not be able to move on to public funds for a period of up to ten years. In 2014, implementation of this policy was ruled unlawful on procedural grounds,²⁴ and is under review.

22 The Sojourner Project was established to provide people with NRPf applying for Indefinite Leave to Remain (ILR) under the DVR with funds to cover accommodation and subsistence costs that would fund space in a refuge whilst this application was being considered by the Home Office.

23 These include those granted Limited Leave to Remain under the following immigration routes: the ten year partner of parent route under Appendix FM of the Immigration Rules; Private life under paragraphs 276BE(1) or 276DG of the Immigration Rules; and on the basis of exceptional circumstances relating to family or private life, outside the immigration rules.

24 *Fakih v SSHD* [2014] UKUT 513.

Another group of people who are lawfully in the UK but have NRPF have become known as 'Zambrano carers.' In a landmark European Court of Justice (ECJ) case ([2011] EUECJ C-34/09) it was found that Mr Zambrano had the right of residence in Belgium as the ascendant (parent) of a minor child who was a national of a member state of the EU and who was dependent on him. The case had significant ramifications across the EU. In the UK, primary carers of British children who are themselves not nationals of an EU Member State may as a result of this case acquire a right to reside and work in the UK. However, the British government in November 2012 excluded people deriving their right of residence from the Zambrano judgment from accessing public funds. That policy that was deemed to be lawful in the case of *Sanneh & Ors v SSWP* [2015] EWCA Civ 49, because the availability of s17 support was deemed to meet the UK's obligations under EU law to provide basic assistance to Zambrano carers. If these parents are not in employment they may have no means of support, except under s17.

Destitute asylum seekers and refused asylum seekers may be eligible for accommodation and financial support from the Home Office under separate provisions: Section 95 and Section 4 of the Immigration and Asylum Act 1999, respectively. Section 122 IAA prohibits local authorities from providing s17 support to those who are eligible for s95 IAA. Asylum seekers are therefore unlikely to be in receipt of s17 support. Families with dependent children whose asylum case is refused continue to be eligible for s95 IAA support until they leave the UK or acquire some form of immigration status that enables them to work or access public funds.

Refused asylum seekers whose children are born after their case is refused and all appeal rights are exhausted (ARE) may be eligible for s4 IAA support, which is often referred to as 'hard case support' because of its limited provisions. Section 122 IAA does not prohibit local authorities from providing s17 support to those who are eligible for s4 IAA in the way that it does for those eligible for s95 IAA support. Case law has indeed ruled that s17 duties will be engaged for these particular refused asylum seeker families unless it can be proven (by conducting an assessment of need) that s4 IAA support can meet the needs of the child. The judge in one pertinent case doubted it would (*R (VC) v Newcastle* [2010] EWHC 2673).²⁵ Notwithstanding this provision, destitute families who have been through the asylum system are unlikely to be supported under s17.

Restrictions on accessing S17 support

Prior to 2002 there were no restrictions for families with NRPF accessing s17 (with the exception, as we have mentioned, of asylum seekers under s122 IAA). This meant that any family excluded from public funds could access the s17 safety net if they became destitute. The Labour government at the time sought to remove this entitlement by introducing restrictions to s17 support for four groups of people, using Schedule 3 Nationality, Immigration and Asylum Act 2002 (NIAA). The four groups subject to these restrictions are:

1. Nationals of EEA countries
2. People with refugee status granted in other EEA countries
3. Refused asylum seekers that have failed to comply with removal directions and
4. People unlawfully in the UK

²⁵ However, this could arguably be weighed up against more recent cases which have suggested that support at s4 IAA rates could meet the needs of children (*Mensah & Bello v Salford City Council* [2014] EWHC 3537).

Human rights exception

Local authorities are restricted from providing s17 support (among other related provisions)²⁶ to anyone that falls into one of these four groups *unless* withholding or withdrawing s17 support would cause a breach of their rights under the European Convention on Human Rights (ECHR) or their rights under EU law if mobile EU citizens. Assessing potential breaches of these rights is a legal requirement where Schedule 3 NIAA applies, and these considerations are frequently undertaken in what has become known as the Human Rights Assessment. Paragraph 14 of Schedule 3 NIAA also requires local authorities to inform the Home Office when a person unlawfully in the UK or a refused asylum seeker that has failed to comply with removal directions becomes known to them.

The exclusions under Schedule 3 NIAA do not apply to children. That means that children are not excluded from s17 support but their parents (if aged 18 or over) are excluded. S17 support, however, as we have seen, is for families and would not usually be provided to children without their parents. In order to separate a child from their parents, a court must agree that the child is suffering, or there is a real, substantial risk of their suffering, significant harm, which may include neglect or significant ill-treatment. That threshold is unlikely to be reached where there are no parenting concerns for the children. Given that separation of families is thus unlikely in the majority of NRPF cases and the Children Act requires local authorities to promote the upbringing of children by their families, the Child in Need and/or Human Rights Assessments are therefore used to assess whether there is a duty to support the family as a whole under s17 or whether no such duty applies.

Case law has clarified that *“if there are no legal or practical obstacles, then return to country of origin does not constitute a breach of human rights.”* (*R (AW and others) v Croydon LBC and others* [2005] EWCA Civ 266). Legal obstacles can include applications to the Home Office for asylum or on Article 3 or 8 ECHR grounds. The case of *Clue v Birmingham City Council* [2010] EWCA Civ 460 confirmed that a local authority cannot withhold or withdraw s17 support to destitute families where there is a pending Article 8 ECHR application with the Home Office, unless that application is “hopeless or abusive.” A subsequent case (*KA v Essex County Council* [2013] EWHC 43) went further by concluding that a continuing duty was owed to those whose Article 8 ECHR application had been refused by the Home Office where no removal directions are issued. This is because only removal directions trigger a right to appeal and requiring a family to leave, or indeed refusing s17 support on this basis, prior to this would prevent them asserting their Article 8 ECHR rights before an independent tribunal.

Additional legal barriers to return may include child protection proceedings or control orders that are in place. Practical barriers may include inability to travel on grounds of pregnancy or health, or a lack of travel documents or safe route of return. Where there are legal or practical barriers, whether these are expected to be short or long term, then local authorities must assess whether any of their statutory powers or duties are owed to that family in the UK, including s17 duties to destitute families with no other support available to them. Where there are no legal or practical obstacles to a family returning to the parents’ country of origin, the local authority must nevertheless go on to assess whether, should the family return, the child or children would be ‘in need’ in the parents’ country of origin; whether there would be a breach of Article 3, 6 or 8 ECHR rights of any family member; and, if they are mobile EU citizens, whether there would be a breach of rights under EU

²⁶ Including s21 (1)(a) National Assistance Act 1948, s21 (1)(aa) National Assistance Act 1948 and s23C, 24A or 24B of the Children Act 1989. Section 23c Children Act 1989 is the duty to provide accommodation to children formerly looked after by the local authority.

law. The judgments of previous applications for asylum or under the ECHR made by the Home Office may be sufficient evidence for those assessments where the family's circumstances have not since changed. Indeed, the local authority does not have powers to come to a different conclusion to the Home Office on immigration matters.

Where no Home Office opinion is given on the case on each of the above matters or if the family is arguing that their circumstances have changed, the following considerations must be addressed. First, using country information that is available to the local authority or by making enquiries with relevant authorities in that country or with family members, it must be assessed whether the child or children would be in need in the parents' country of origin by ascertaining whether the child would have access to services such as schooling, health care, housing and other means of support. This requirement derives from the judgment in *M v Islington* [2004] EWCA Civ 235 where the local authority did not make sufficient enquiries as to the situation of the child should they return to the mother's country of origin.

Second, the local authority must be satisfied that the family members will not be subject to inhuman or degrading treatment under Article 3 ECHR should they return. This may be argued on medical grounds, a high threshold for engaging Article 3 having been established in the case of *N v SSHD* [2005] UKHL 31 in which it was stated that:

"the test, in this sort of case, is whether the applicant's illness has reached such a critical stage (i.e. he is dying) that it would be inhuman treatment to deprive him of the care which he is currently receiving and send him home to an early death unless there is care available there to enable him to meet that fate with dignity."

Third, the local authority must be satisfied that the right to private and family life under Article 8 ECHR of each family member would not be breached if the family were to return. Article 8 ECHR does not create a right of abode in a particular country, so if the local authority can argue that the family life of each family member can be maintained in another country, the s17 duty to the family may not be engaged in the UK.

Fourth, if any legal proceedings are in place, the local authority must be satisfied that, should the family return, there would not be a breach of Article 6 ECHR: the right to fair trial. Fifth, the best interests of children must be a primary consideration in the Human Rights Assessment, a duty deriving from Article 3.1 UN Convention on the Rights of the Child which is given effect in s11 Children Act 2004. Where appropriate, the law requires that the views of the child should be sought. Finally, where the family are mobile EU citizens, it must be established whether any member of that family is exercising Community Treaty rights in the UK and whether the provision of s17 support is necessary to prevent a breach of that right: these are rights as workers, jobseekers, self-employed persons, self-sufficient persons or students.

If the local authority is satisfied with the information that is available to it that the children would not be 'in need' on return, and that there would be no breach of the ECHR and, where relevant, rights under EU law, it can conclude in the Human Rights Assessment that there is no s17 duty in the UK. Whilst the local authority can offer assistance to the family in returning to the parents' country of origin, either through referring to voluntary return services provided by Refugee Action or the Home Office, or by funding voluntary return themselves, only the Home Office has the powers to enforce return. If a family is neither forcibly removed by the Home Office nor accepts the offer of voluntary return, the authority must decide whether to withhold support on the strength of

the legal arguments made in the Human Rights Assessment or to continue or initiate support if its duties to the child remain because the family has stayed in the UK.

Service arrangements

Discharge of local authorities' responsibilities under s17 to NRPF families usually falls to their Children's Services department, although families may at first be referred or refer themselves to the local authority Housing Department as destitute. In implementing the NRPF exclusion, local authority staff in Housing Departments are required by law to exclude NRPF families from their services (housing-related public funds). Irrespective of a family's level of need, if they have NRPF, no 'public funds' can lawfully be provided. This process of determining who is eligible and who is not eligible for public funds is therefore relatively straightforward. In responding to destitute families who have NRPF, housing departments are required simply to administer an immigration exclusion and then refer to Children's Services if it appears to them that the children may be 'in need'.

Assessments of need and provision of services under s17 for NRPF families may be handled as part of the general caseload of child in need cases or in dedicated NRPF teams. Some NRPF teams are based outside Children's Services in Adult Social Services where duties to families and single adults come under the responsibility of the same team. For ease of reference, we refer to the responses of 'Children's Services departments' in this report although we recognise s17 duties to NRPF families are occasionally the responsibility of other local authority departments.

In local authorities without dedicated teams, a common service arrangement among local authorities is for claimants to receive an initial response from a referral and assessment team who undertake assessments and make recommendations to a manager and/or a panel. If the family is taken on for support, the case may then get transferred to the case ownership of a longer-term team who administer and provide the support necessary to meet the needs of the family. Dedicated NRPF teams are more likely to undertake both the assessments of need and administer support. The implications of differing arrangements are explored in our study.

Level and type of support provided to NRPF families under s17

A number of recent cases have considered the appropriate level of support under s17 required to meet the needs of children and families in order to safeguard and promote the welfare of children in need. Although the test cases do not necessarily provide clarity – e.g. the courts have not determined an appropriate level of payment – there are some general principles that local authorities are required to consider. Whilst in the case of *R (VC) v Newcastle City Council* [2011] EWHC 2673, the judge doubted that the level of support provided under s4 IAA (£35.39 per person per week) would meet the needs of children under s17, the more recent case of *Mensah & Bello v Salford City Council* [2014] EWHC 3537 found that it was not inappropriate to have a policy of providing subsistence at s4 IAA rates on the basis that it would meet the basic subsistence needs of families. Nor was it unlawful for the local authority to have regard for the subsistence rates determined by another public body for the same purpose, that is, of alleviating destitution. A cluster of cases have clarified further general points around the provision of subsistence under s17: that it is not unlawful to have a standard rate of subsistence across all supported families within a local authority as long as it allows for exceptions to be made according to specific circumstances; that adults should also be provided with subsistence under s17 and that a local authority's policy on subsistence should be made available to families (*PO v Newham Council* [2014] EWHC 2561); and that even where subsistence payments are low (although no figure is provided for clarification), this is lawful where

there is a rationale for such payments and that these are reviewed in light of changing circumstances (*C, T, M & U v Southwark Council* [2014] EWHC 3983). For instance, subsistence payments could take into account other sources of limited income or where needs change at particular times of year.

The provision of long-term B&B accommodation for families supported under s17 was ruled in the case of *C, T, M & U v Southwark Council* [2014] EWHC 3983 to be regrettable but not necessarily unlawful when weighed up against additional considerations, such as the proximity of schools or the availability of accommodation. This case also considered the policy of dispersing families outside the supporting local authority area, ruling that no specific assessment was required in such circumstances, but that regular assessments and reviews would need to consider the well-being of children, the wishes of families and the size of available accommodation in the area to which families would be dispersed.

Evolution of a parallel welfare system

The implications of the law and the tensions it creates are complex for Children's Services. For destitute families with NRPf who are *not* excluded from s17 by Schedule 3 NIAA (and not entitled to Home Office asylum support), they must step in to provide support. This effectively creates a parallel welfare system for those the NRPf policy is otherwise designed to exclude; but a welfare system that is funded by local rather than a central government.

For destitute families with NRPf who *are* excluded from s17 by Schedule 3 NIAA, we saw that s17 support from Children's Services must still be provided *if* necessary to prevent a breach of human rights or rights under EU law. That decision is subject to an assessment of need that must negotiate, on the one hand, duties to children and their parents under s17 and, on the other, exclusions to s17 affecting only parents under immigration legislation, whilst fulfilling the responsibility under s17 to keep that family together.

It is worth reiterating here the principles under which The Children Act 1989 was enacted, to highlight the legal framework which is here confronted by the differing objectives of immigration law. The literature review (Section 3, above) highlighted that the Children Act was a landmark piece of legislation intended to shift social work practice away from prevention of risk and towards promoting the welfare of children, within the family. The Act sought to limit what was perceived to be the state's excessive interference in family life through the removal of children at risk; an overarching principle of the Act being that of keeping families together. There is therefore a high threshold set for family separation. Being unable to meet the material needs of a child because a family is destitute is unlikely to meet the separation threshold.

At the time the Children Act 1989 was enacted, all families in the UK experiencing hardship would normally have had access to a minimum level of support through mainstream welfare benefits, ensuring basic needs would be met.²⁷ Although assistance in kind or in cash is mentioned specifically

²⁷ Before 1980, although migrants were required to have sufficient funds to maintain themselves, they were nonetheless entitled to accommodation and financial support ('public funds') on an equal footing to British nationals if they fell into hardship. The first immigration-related eligibility rules in relation to social security were imposed by the Supplementary Benefit (Aggregation, Requirements and Resources) Amendment Regulations 1980, followed by the Income Support (General) Regulations, which introduced the concept of 'person from abroad' as a means of defining eligibility for social security. The Asylum and Immigration Appeals Act 1993 introduced the first explicit restriction to accessing social housing for asylum seekers. Further restrictions were imposed by the Immigration and Asylum Act 1996, which introduced the concept of the 'person subject to immigration control' as the root term by which eligibility for housing and social security would be determined. The Act and Regulations made under it restricted eligibility for homelessness assistance and most forms of means-tested social security for persons subject to immigration control.

in s17 (with clarification that this included accommodation, added to the statute in 2002), it is thus unlikely that this provision was intended to become a parallel or substitute form of long-term welfare provision to meet the basic needs of destitute families. Yet whilst the language of s17 has remained intact, the context in which it is discharged has changed significantly.

First, in relation to immigration law, gradual restrictions to welfare benefits have affected families from abroad since the Immigration Act 1971. The current iteration of the NRPf policy has its foundation in the Immigration and Asylum Act 1999 which defined who was subject to immigration control and had the NRPf restriction, as well as establishing Home Office asylum support for asylum seekers and refused asylum seekers.²⁸ Whilst the 1999 Act thus consolidated welfare restrictions for individuals and families from abroad, we saw that the government has accelerated use of welfare restrictions since 2012 by introducing the ability to grant Limited Leave to Remain (LLR) under certain immigration routes²⁹ on the condition of having NRPf; by giving 'Zambrano carers' a right to reside but with NRPf; and, most recently, restricting the access of mobile EU citizens to public funds through stricter interpretation of free movement rules (Blauberger and Schmidt, 2014).

Second, a considerable body of case law has, in the most part, interpreted quite broadly the local authority duties under s17 to this group of families.³⁰ The courts have also almost consistently ruled that local authorities, rather than the Home Office (under its s95/s4 IAA support provisions), should have the responsibility for supporting people with NRPf.³¹ Without primary legislation dealing specifically with the support needs of this group of families (who have NRPf but are not asylum seekers), it has been left to a litany of test cases, making it a fluid area of legal interpretation.

Early case law focused on the relationship between the Children Act and the ECHR. This has now stabilised. The terms of the legal debate now focus more on assessment of destitution and provision of subsistence, as in *MN v LB Hackney [2013] EWHC 1205*, a rare example of the courts giving local authorities considerable leverage in the assessment process; the legality of welfare benefit exclusions for certain groups of people residing lawfully in the UK³² and the level of subsistence and type of accommodation provided by local authorities under s17.³³ In relation to the legality of welfare benefit exclusions, the courts have supported the case made by central rather than local government, confirming the lawfulness of the NRPf policy affecting certain groups of people and consequent reliance on s17 for those who are thereby excluded.

Third, the needs of families within communities have evolved with greater numbers of people having an immigration status that brings with it varying rights and restrictions. Significantly, welfare needs (as identified in our research findings, below) have increased as a result of the economic downturn, with fewer opportunities in the formal and informal job markets. This has coincided with

28 This was originally called, and is still often referred to, as 'NASS support'.

29 These include those granted Limited Leave to Remain under the following immigration routes: the ten year partner of parent route under Appendix FM of the Immigration Rules; Private life under paragraphs 276BE(1) or 276DG of the Immigration Rules; and on the basis of exceptional circumstances relating to family or private life, outside the immigration rules.

30 E.g. *Clue v Birmingham City Council [2010] EWCA Civ 460*, *KA v Essex County Council [2012] EWHC 43*, *M v LB Islington [2004] EWCA Civ 235*.

31 E.g. *R (VC) v Newcastle City Council [2011] EWHC 2673*, *NASS v Westminster [2002] UKHL 38*, *SO v Barking and Dagenham [2010] EWCA Civ 1101*.

32 For instance *Pryce v LB Southwark [2012] EWCA 1205* and *Sanneh & Ors v Secretary of State for Work and Pensions [2015] EWCA Civ 49*.

33 See *C, T, N & U v Southwark Council [2014] EWHC 3983*, *PO v Newham Council [2014] EWHC 2561* and *Mensah & Bello v Salford City Council [2014] EWHC 3537*.

more stringent Home Office checks on employers, leading as intended to exclusion from the labour market but with some families as a result falling into destitution.

In spite of this changing context, the principles of and duties under the Children Act have remained the same. Children with no access to alternative support are 'in need' and local authorities have duties to safeguard and promote their welfare through the provision of accommodation and other services that are assessed as necessary to meet their needs.

Legislation is in place to meet the support needs of certain groups of NRPF families who might otherwise be destitute: asylum seekers, refused asylum seekers and, as we saw, people on spouse visas fleeing domestic violence.³⁴ The gap that remains for those destitute families with NRPF who do not fit into these categories is filled by the s17 safety net. That is not to say that every family who has NRPF is entitled to, needs or accesses Children Act support – only the small minority who become destitute. The breadth of the s17 duty however does leave local authorities with responsibilities, where children are in the UK and are in need, to fill the gaps in central government support, giving rise to the parallel welfare support service under s17 that is the focus of this study.

Primacy of the child's needs v. immigration control

There is thus a tension in the legal and policy framework between the underlying principle of s17 to safeguard children within their families and the exclusion of (adult) parents, but not children, from s17 by immigration legislation (Schedule 3 NIAA). This raises the question of which takes precedence in law when families remain together and how that affects the outcome for families resulting from the Children's Services assessment process: is the outcome that child and parent are included under s17; or that child and parent are excluded because of Schedule 3 NIAA?

Ultimately, the answer hinges on the question of a whether the family return to their country of origin in practice, and not whether they could do so as a matter of law. If the Home Office and/or the local authority establish that, in law, the family could return, but they do not, the s17 responsibilities of the local authority are still engaged if that family remains destitute in the UK. This means that the process of implementing the Schedule 3 NIAA exclusion for families only has the intended outcome if families leave the UK, either voluntarily or by forcible removal. If a family remains in the UK and the child is assessed to be in need due to destitution, s17 support will need to be provided until the family is no longer destitute, leaves the country or is granted status with recourse to public funds. We set out our findings on this question of 'returnability' in Section 7 of this report.

Local authorities are thus caught between two policy agendas: that designed to safeguard children through the provision of services, on the one hand, and the national policy of using exclusions of adults from services as a means of migration management and limiting public expenditure.

34 In the case of people on spouse visas fleeing domestic violence, they will be eligible to have their NRPF condition on their visa overturned if they meet the eligibility criteria under the Destitution Domestic Violence Concession. More info: <https://www.gov.uk/government/publications/application-for-benefits-for-visa-holder-domestic-violence>.

35 Use of welfare exclusions as a tool of migration management is evident in Home Office documents such as a 2014 press release in which it was stated that: "measures in the [Immigration] Act will further limit the benefits and services migrants can access and make it easier to remove people with no legal right to be in the UK. It will also make the UK less attractive to people who want to come here to try to exploit the system." (<https://www.gov.uk/government/news/new-measures-to-tighten-up-the-immigration-system>); and an impact assessment on the removal of Housing Benefit from certain mobile EU citizens in which it is stated that "The package of measures which restricts access to benefits by jobseekers from other member states is necessary to protect the UK's benefit system and to discourage people, who have no established connection or who have broken their connection with the UK, from migrating here without a firm offer of employment or imminent prospect of work." (http://www.legislation.gov.uk/ukia/2014/67/pdfs/ukia_20140067_en.pdf).

Restricting families from public funds shifts the responsibility for supporting destitute families from central to local government. Attempts to restrict access to welfare support comes up against two key cornerstones of children's social care: that families should remain as a unit and that children must not be destitute.

There is no parallel conflict for central government. It can use the existence of the s17 safety net to defend its exclusion of families from mainstream welfare benefits (see below), and the cost to the public purse falls to local authorities not to its own budget. We explore the relationship between local authorities and the Home Office in this regard in Section 7 of this report.

Respective responsibilities of central and local government

There is thus a tension between central government as the determinant of who has access to mainstream welfare benefits and local government as provider and funder of the safety net (under s17) for those families who are thereby excluded. Over time, the NRPF policy has been extended to cover broader categories of families whilst mobile EU citizens are also increasingly restricted from accessing public funds, meaning that a greater range of families fall within scope of the s17 safety net. This has, as we saw, led to a number of test cases that have resulted from disagreements between local and central government regarding who has responsibility for providing support to those families that become destitute. At play in these disagreements is the imbalance of power between a strong central arm of government, controlling immigration status and the purse strings, and a weaker local arm of government with a statutory duty it must nevertheless fulfill.

This dynamic is highlighted in the recent case of *Sanneh & Ors v Secretary of State for Work and Pensions* [2015] EWCA Civ 49 in which central government used the existence of s17 to justify exclusions to centrally-provided welfare support. It was argued on behalf of the Secretary of State for Work and Pensions that, if it was necessary for a Zambrano carer to be provided with any social assistance, this need not be on the same basis as other mobile EU citizens. Rather, 'payment of adequate social assistance is achieved through section 17 of the Children Act 1989, which is always available as a safety net...' Noting that s17 imposed a duty on local authorities to provide support to children in need, which could be financial support and/or accommodation for both parent and child, the court was assured that 'a Zambrano carer and the EU citizen child for whom they care would not be left destitute.'³⁶ Notwithstanding this reliance on local authorities to maintain the safety net as increasing numbers of people are excluded from public funds, local authorities have limited influence over the legislative and policy changes that affect them.

We saw in section 3 that there is historical precedent to this dependency on social work for covering gaps in the universal welfare system, the subject of some critical analysis in the academic literature. The challenging dynamic of the relationship in the case of the s17 entitlement is exacerbated by the fact that local authorities must meet their accommodation and subsistence duties under s17 to NRPF children and families as part of their broader s17 duties without funding from central government to account for this specific cost. Requests by local authorities for reimbursement of costs have been rejected by the Home Office.³⁷ Local authorities, moreover, can have responsibility to provide s17

36 *Sanneh & Ors v Secretary of State for Work and Pensions*, [2015] EWCA Civ 49: paras 40 and 93.

37 See minutes of LGA Asylum and Refugee Taskgroup 18 June 2009 (<http://tinyurl.com/ozmazhy>), quoting response of Lin Homer, then Director of UKBA in response to NRPF Network report: "...the priority must be to tackle the problem at source by addressing the presence or status in this country of the individuals concerned rather than perpetuating and risking exacerbating the problem by making specific additional financial provision for local support services for this category."

support throughout the period that families await the outcome of immigration claims, but resolving those claims is a Home Office responsibility over which they have little control.³⁸

NRPF Connect

A recent development to address some of the issues that arise from this situation is NRPF Connect, a database designed for participating local authorities and the Home Office to share information securely about their supported NRPF families.³⁹ The aim is to resolve cases more quickly and reduce the financial burden of support on local authorities.⁴⁰

NRPF Connect was in its infancy during fieldwork for this study and a full consideration of its impact is therefore not possible here. By the end of our study, 28 local authorities had joined and entered their data into the database of cases. Local authorities pay an annual fee for that service, and the Home Office provides £32k + VAT each year towards the upkeep of the system.

The database is considered by its progenitor, the NRPF Network,⁴¹ to provide the most sustainable and cost-effective way of dealing with supported NRPF cases. It was found that the project has facilitated developing strategic relationships between local authorities and the Home Office, including providing a basis for monitoring performance but as yet there remain concerns among local authorities about communication and speed of resolving cases. There are regular meetings of the NRPF Network with the Home Office at a national level regarding NRPF Connect and broader policy issues relating to local authority support to NRPF families, though without participation by the Department for Education which is responsible for overseeing the implementation of The Children Act 1989.

Bearing this understanding of the legal and policy framework in mind, we now turn to our findings and look first at the families that local authorities report that they are supporting under s17 and the welfare needs that they present.

38 The Home Office also has a duty under Section 55 of the Borders, Citizenship and Immigration Act 2009 (the 2009 Act) to make arrangements for ensuring that immigration, asylum, nationality and customs functions are discharged having regard to the need to safeguard and promote the welfare of children in the UK.

39 Single adults with NRPF are also included in the database but are outwith s17 and this study.

40 28 local authorities are using NRPF Connect at time of publication (June 2015). While fieldwork was being undertaken, the database had newly been rolled out and was being used by 11 authorities (including three of the local authority research sites for this study).

41 A network of local authorities and partner organisations focusing on the statutory duties to migrants with care needs who have no recourse to public funds. <http://www.nrpfnetwork.org.uk/Pages/Home.aspx>.

5. NRPF families and their welfare needs

We saw in Section 4 that NRPF is a condition attached to the vast majority of those who come to the UK whether to work, study, join their family, seek asylum or simply to visit. It also applies to those who have overstayed their visa. It is only a very small number of them who subsequently become destitute and seek local authority support. Our surveys provide evidence on the number, distribution and circumstances of these families, supplemented by our interview material.

Data from the survey of 174 local authorities, to which 137 responded, show that in the financial year 2012/3, 2,679 NRPF families and 4,644 children were provided with accommodation and/or subsistence support under s17. This represented a 19% increase on the previous financial year, although percentage change in each region/nation differed considerably. Eight of the regions saw increases in numbers of supported families, whilst Wales and Yorkshire and Humberside saw a reduction. Taking into account the number of non-responses to our survey, we estimate that the total number of supported families across all of England and Wales is likely to be 27% higher at 3,391 with the total number of supported children at around 5,900. As with any extrapolation, it can be informative in the absence of full information. Whilst our non-responding authorities had a similar spectrum of resident non-UK nationals to responding authorities (see Fig 2), this extrapolation is based on the assumption that this signifies the missing authorities have roughly the same numbers as those that provided data. This figure of 5,900 is small when compared to the overall number of children assessed to be in need in 2012/3 of 378,600 (a figure that includes children supported under s20 Children Act 1989 as well as under s17).

Figure 5 – NRPF Families supported under s17 by Local Authorities in England and Wales

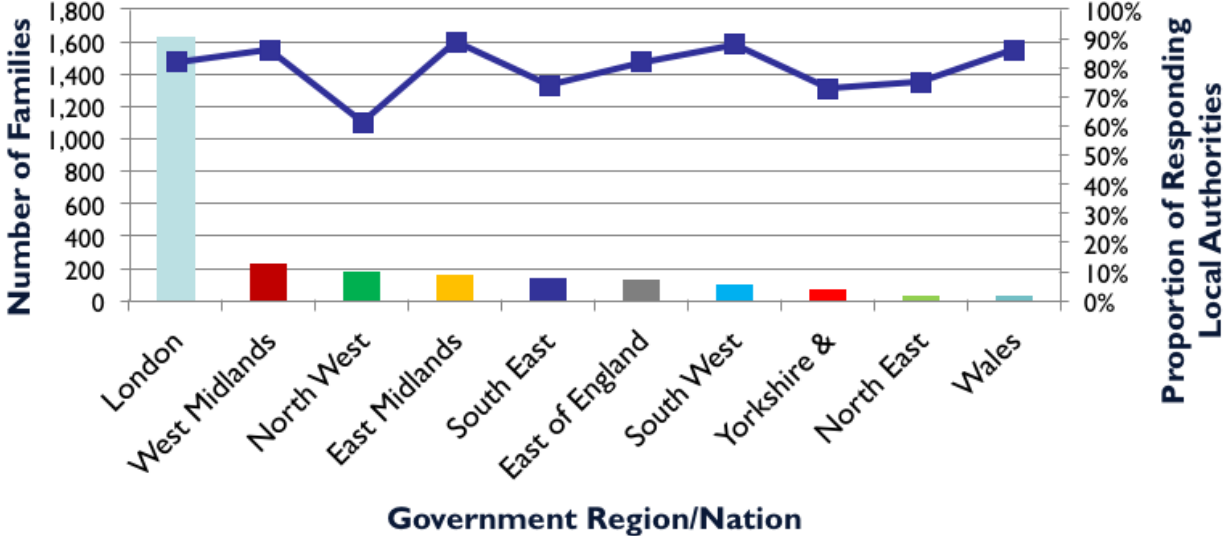
	Number of local authorities	Total LA responses	Number of LAs providing services ⁴² (2012/3)	Number of NRPF families (2012/3)	Number of children (2012/3)	Number of NRPF families (2011/2)	Number of children (2011/2)	NRPF families % change 2011/2 - 2012/3	Number of LAs with dedicated NRPF service
East Midlands	9	8	6	161	423	88	200	83%	2
East of England	11	9	8	124	196	123	189	1%	2
London	33	27	26	1,632	2,787	1,364	2,246	20%	16
North East	12	9	6	33	60	24	47	38%	1
North West	23	14	7	174	276	155	304	12%	1
South East	19	14	12	138	199	130	171	7%	2
South West	16	14	7	97	148	45	67	116%	1
West Midlands	14	12	11	222	349	179	265	19%	3
Yorkshire and Humberside	15	11	7	65	131	93	177	-30%	1
Wales	22	19	6	33	75	42	97	-21%	0
Total	174	137	96	2,679	4,644	2,243	3,763	19%	29

Families are spread unevenly across the UK with a particular concentration in London (61%). Figure 6 shows the distribution across the regions of England and Wales. The secondary vertical axis shows response rates for local authorities in each of the regions/nation, which are relatively consistent, with

42 Section 17 Children Act 1989 accommodation and financial support to families who have NRPF.

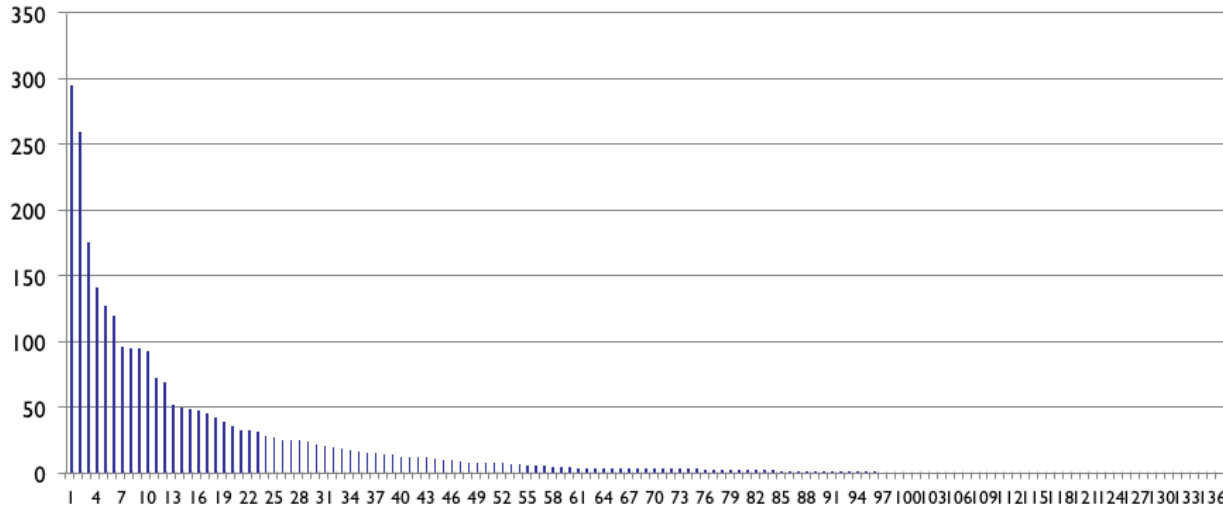
the exception of North West England (at 61%), where, had the same proportion of authorities responded, one might expect a slightly higher number of cases than is reported.

Figure 6 – Geographic distribution of supported NRPf families and response rates by English government regions and Wales



Within several regions, NRPf families supported under s17 are concentrated in one particular local authority, invariably the largest urban area. Indeed, on the whole, families are clustered in a small number of local authorities. Figure 7 provides a visualisation of the distribution of supported families from the local authority with the most families to that with the fewest. The authority with the highest number of supported families had 11% of the national total; the top ten had 56% of national total and top 20 had 75% of national total. Forty-one of the 137 authorities were not supporting any NRPf families.

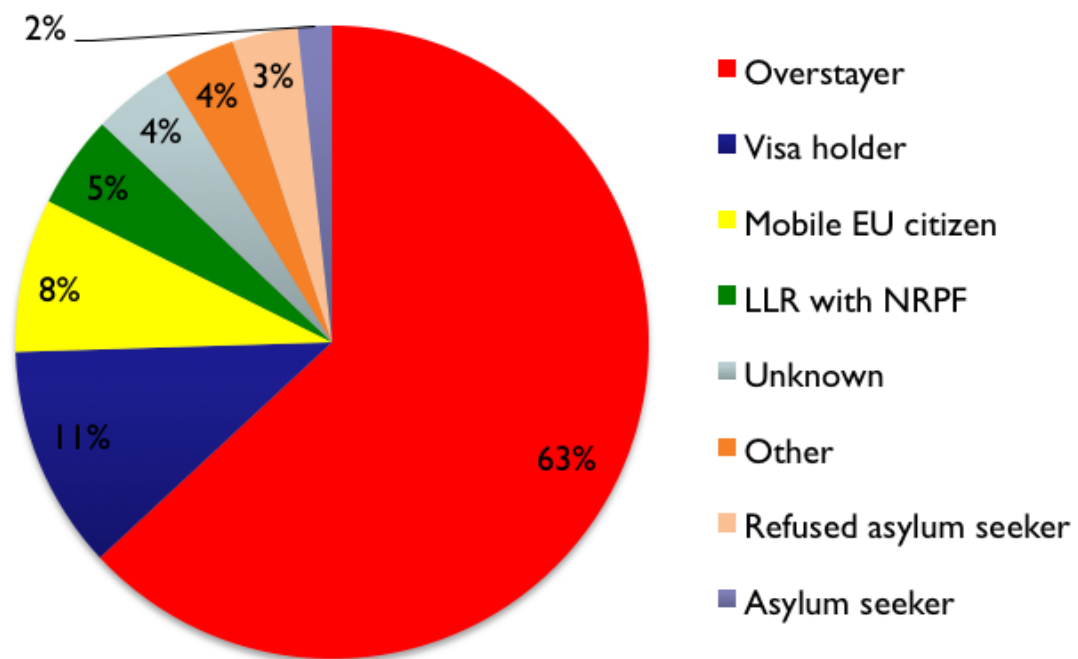
Figure 7 – Distribution of NRPf Families from local authority with highest number to that with the lowest number of supported s17 NRPf families



Data from our more detailed survey of 24 authorities enables us to profile supported NRPf families. Figure 8 presents the data on families by immigration status. Low numbers of supported asylum seekers/refused asylum seekers is explained by the fact that support for these groups is generally the remit of the Home Office (see section 4), with local authorities more likely to support those on visas, those who have overstayed visas and mobile EU citizens. 63% of the 3,391 supported families (in which 5,900 children are estimated to be supported) in these authorities were overstayers (a finding which indicates that it is only a small proportion of the estimated 120,000 children with irregular immigration status in the UK (Sigona and Hughes, 2012) that have received this support).

Figure 8 – Immigration status of Section 17 NRPf families

Data from detailed survey of 24 local authorities

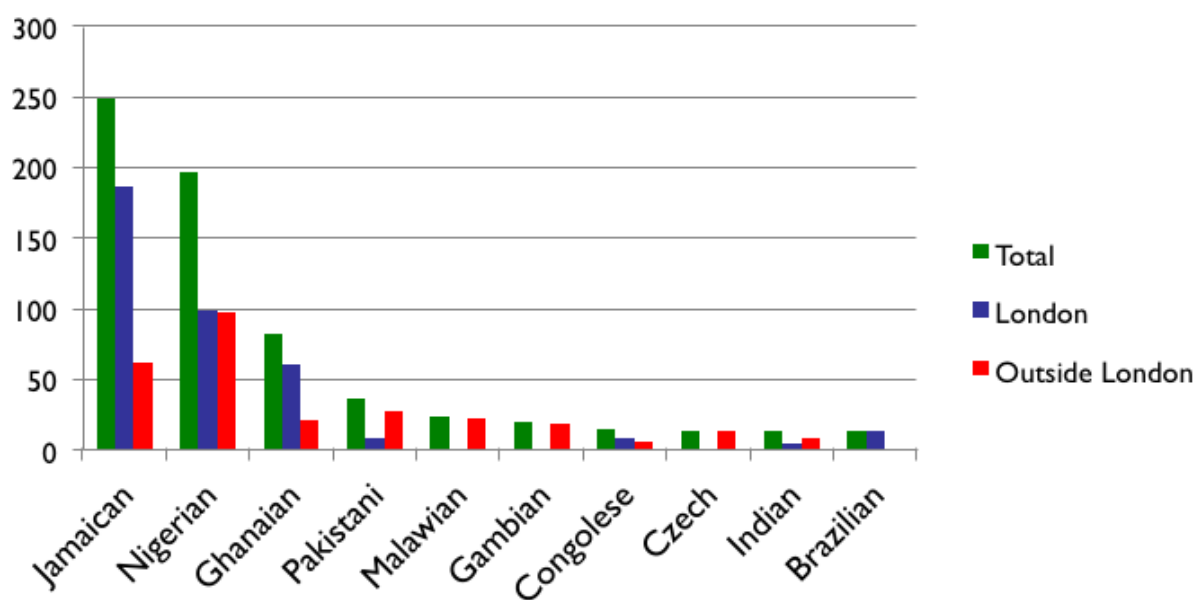


N = 867

This break down of the cases does not take into account the varying lengths of time that different groups are likely to be supported by local authorities. For instance, interviewees reported that mobile EU citizens are more likely to be in receipt of short-term support whilst they are waiting to become eligible for public funds whereas for overstayers support periods are likely to be longer as they await decisions on, for instance, applications to remain on human rights grounds (see Section 7 for data on length of time s17 support for NRPf families is provided).

By country of origin, we see a pronounced trend (albeit one on which neither our surveys nor interview data provide a clear explanation): Jamaican and Nigerian nationals make up 51% of cases, with a smaller but significant number from Ghana and Pakistan. Significantly, 23% of the supported families had at least one British child and the primary carers of those British children therefore had a right to reside in the UK as a 'Zambrano carer' if they meet certain conditions specified in the amended Immigration (European Economic Area) Regulations 2006.

Figure 9 – Families by nationality of parent (principal immigration applicant)



N = 869

Nationalities of supported families varied considerably from one local authority to the next. In one of the local authority research sites, for example, all families, although fewer in number than in other local authority research sites, were mobile EU citizens, where the circumstances and needs of families, as well as length of time in need of support, will differ from those of overstayers.

Figures from our detailed survey show that 84% percent of supported parents were female and 16% were male. 89% of supported families were single-parent families and 11% were two-parent families. Amongst single parent interviewees in this study, all but one of whom were female, a noticeable trend was that fathers had contact with children but did not have parental responsibility and had settled status in the UK.

Evolving welfare needs

The welfare need of families at the point of referral to the local authority was, overwhelmingly, for accommodation. This was followed by food and other essentials such as clothing and warmth: physical welfare needs that would otherwise be met by employment for those permitted to work or through the mainstream welfare system. These welfare needs were identified by local authority interviewees as 'safeguarding risks': that is, as defined by the statutory guidance, situations that require intervention to protect children from maltreatment, that prevent the impairment of their health or development, that ensure children grow up in circumstances consistent with the provision of safe and effective care and that enable all children to have the best outcomes (Department for Education, 2015). Significantly, child protection concerns – where there are fears that a child is suffering or may suffer significant harm – presented only in a minority of cases and both social workers and voluntary sector interviewees expressed little if any concern about families' parenting skills. This is supported by figures from our detailed survey which showed that only 2.2% of all children within NRPF families being supported under s17 were subject to a child protection plan.

For a minority of the families, welfare needs were not limited to accommodation and subsistence. Our interviews with families identified six that had children with additional, complex needs, including

disabilities, health needs or behaviour problems and three of these families were receiving additional local authority services whilst the other three were receiving support from the NHS. Whilst there is no evidence in this study of complex needs amongst children or child protection concerns going unmet, some interviewees identified a risk in the needs of NRPF families being perceived as limited to accommodation and subsistence, potentially obscuring other, more complex, needs that would be identified in other cases. They suggested that the 'NRPF label' presupposes the nature of the problems facing families and the application of a 'one size fits all' solution, risking situations where child protection concerns, or children's physical or mental health needs are not identified or addressed.

Exploitation

Whilst safeguarding risks were strongly linked to material deprivation, families' vulnerability to exploitation was a frequent observation amongst local authority and voluntary sector interviewees.

"There's always somebody who is able to take advantage of people who are trying to find ways of surviving."

- Team Manager, local authority

Prior to referral to the local authority, families' circumstances drove them into situations of forced dependency on family, friends or community and, crucially, men, mainly for accommodation. The need for accommodation was propping up inappropriate relationships and presenting risks to children. Some parents were engaging in informal work which interviewees in local authorities and the voluntary sector considered to be risky and exploitative, including sex work. Interviews and our survey of the voluntary sector revealed that experiences of domestic violence were a key element in many referrals of women and children to the authority for support.

Parents' own accounts of their lives prior to referral in some cases support these accounts. Referral was most commonly after a period of stability, often lasting years, followed by a deterioration of circumstances, culminating in a crisis. Almost all parent interviewees had previously been working and self-supporting, many renting accommodation in the private rented sector, others staying with friends. Parent interviewees had frequently been engaged in formal work (though occasionally on false documents/using false identities) mainly in the care and service sectors. Some service users had been underemployed, doing such work despite having medical or accountancy qualifications, for example. Informal work was also prevalent, the most common forms of work being housework (often in exchange for accommodation), sex work, hairdressing, cleaning and catering. At times, such work was felt to stray into exploitation or abuse and, at its most extreme, servitude with (lack of) immigration status acting as a lever of power.

Parent: *Do you understand what a house girl is?*

Interviewer: *No.*

Parent: *A house girl is like a slave.*

Interviewer: *Right. Is that what happened?*

Parent: *Yeah at first.*

Interviewer: *With who?*

Parent: *In my relationship...his family. And then I realised with him as well*

Family life in the UK

The earlier period of stability and self-sufficiency that families reported reflected the reasons they had come to the UK: to study, work or join family/partners, or for a small minority to flee dangerous situations in their home country. Parent interviewees said that they had come to seek a better life and, for many, life had been good for a considerable period of time. They demonstrated a relatively high degree of integration within their communities, irrespective of whether they had regular or irregular immigration status. This might be through work, place of worship, through their children going to school, volunteering, registering with a GP and having a health visitor, for instance, which became more salient over time.

Subsequently however, a common experience was that of a deterioration of circumstances owing to one or more of a combination of factors: the economic downturn resulting in fewer formal and informal work opportunities, increasingly stringent immigration requirements facing employers, the inability of applicants to meet the requirements of the renewal of their visa or the refusal of the Home Office to renew their visa, an administrative error in the immigration process (a lost passport, for example – see below in section 7), and, most frequently mentioned, relationship breakdown, including domestic violence.

A majority of families had previously been staying with friends, sometimes after relationship breakdown with a partner; with churches and other faith organisations also playing a key role in providing families with a level of financial help and support in kind from fellow members of congregations. These were generally precarious situations, with families moving from place to place. With the passage of time however, most had exhausted this support and that of friends and family, particularly because children were involved. This was then followed by a crisis, which eventually led to a referral to the local authority.

All parent interviewees were reluctant to return to their country of origin and, of those without regular status, most had submitted applications to the Home Office for permission to remain. Mobile EU citizens were most often looking for work or awaiting the outcome of welfare benefit claims. Most interviewees felt that their lives were established in the UK as they had been in the country for a long time. The most common reasons given for wanting to stay were in relation to their children: that they wanted their children's future to be in the UK, to continue their education and, finally, that their children knew little about their country of origin. Most said that they had nothing in their country of origin to return to. A small number of parent interviewees feared for their safety should they return (whether because of the situation in the country or reason to fear violence within their own family) and some said they were prevented from leaving due to contact commitments between their children and separated fathers. Overall, the sense of investment families had in remaining in the UK was strong and greater than their fear of living with insecurity and hardship.

Identification of welfare needs

In plotting the journey of families in this way up to the point of referral to the local authority, it is possible to see certain trends in their circumstances as well as in the organisations and institutions with which interviewees had contact.

In the years that families were living in their communities prior to their situation deteriorating, most were active members of a church,⁴³ and had contact with universal statutory services such as schools

43 One service user reported receiving support from a mosque, but most were active members of a church.

and the NHS. As their situation deteriorated it was frequently these services that identified emerging welfare needs, for instance a teacher noticing that children were hungry at school or health visitor that home circumstances were awry. This role was possible because these are universal services, often outreach rather than drop-in based. When local authorities identified to us the organisations that referred most families, these were thus most often statutory services: police, NHS, schools and other departments within the local authority. A significant number of referrals however were self-referrals, suggesting that many of the families find out about local authority services via contacts in the community. Local authority participants noted that the voluntary sector also made referrals but appeared to play less of a role in identifying welfare needs. Rather its principal role was in providing expert advocacy support during the local authority assessment process.

6. Local authority practice: assessments and provision of services

We set out to understand how assessments of need and provision of services under s17 for NRPF families are undertaken by local authorities; whether their statutory duties under s17 are met and whether practice varies between and within local authorities in relation to assessments and services. We thus considered whether the legal and policy framework (as detailed in Section 4 of this report) is implemented consistently or inconsistently across boroughs and, if the latter, at what point inconsistency takes place, for instance whether resulting from the exercise of discretion by individual social workers.⁴⁴ This section is based on evidence collected during our 92 interviews, giving in-depth insight into the assessment process and provision of services under s17 to NRPF families.

Local authorities must work to the statutory guidance for the assessment of children in need under s17 (Department for Education, 2015). That guidance does not, however, cover the specific circumstances of NRPF families who present to local authorities as destitute. Indeed, whilst the guidance does state that assessments for some children, including asylum seeking children, will require particular care, there is no mention in the document about children whose parents have NRPF, and the considerations, particularly in relation to destitution and human rights, that are required. More broadly and perhaps as an explanation of the lack of statutory guidance, the Department for Education, which oversees the implementation of the Children Act 1989 has not focused on the issue of s17 support to the small proportion of children in need that are in NRPF families.

Social workers must work to the statutory guidance in their assessments but at the same time adhere to immigration law and the case law that frames practice (as detailed in Section 4 of this report). Local authorities may have written their own guidance or follow guidance provided by the NRPF Network (NRPF Network, 2011) that take into account the additional immigration-related considerations e.g. the impact of Schedule 3 NIAA or assessments of destitution. These guidance documents do not, however, have statutory status.

Some key points from the statutory guidance on assessment of children in need:

- A child in need is defined under the Children Act 1989 as: *“a child who is unlikely to achieve or maintain a satisfactory level of health or development, or their health and development will be significantly impaired, without the provision of services; or a child who is disabled. In these cases, assessments by a social worker are carried out under section 17 of the Children Act 1989;”*
- Assessments must be child-centred, based on an understanding of a child's needs and views;
- Local authorities should have clear criteria that stipulate the level of need necessary to trigger an assessment of need under s17;
- The purpose of the assessment is to decide whether the child is a child in need and what level of services will be required to meet those needs;
- Assessments that are of a high quality include the following elements: they are child-centred and focus on action and outcomes for children; they address the child's needs within their family and wider community; they lead to action including the provision and review of services; they involve children and families; and they are transparent and open to challenge;

⁴⁴ We do not consider assessments under Section 47 Children Act (enquiries relating to child protection concerns) in this study.

- A decision regarding the response that will be required should be taken within one working day of the referral. A statutory assessment under s17 should take no longer than 45 days.
- Source – Department for Education (2015) Working Together to Safeguard Children: A guide to Inter-agency Working to Safeguard and Promote the Welfare of Children (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/419595/Working_Together_to_Safeguard_Children.pdf)

Neither s17 nor the statutory guidance on assessing children in need (Department for Education, 2015) state clearly when the duty to assess a child is triggered and there is some flexibility in guidance on the assessment process itself. An assessment must be completed within 45 days, but a local authority can elect to complete this in two stages (initial and core assessments) or as a single assessment. In the eight research sites in this study, local authorities conducted statutory assessments in different ways. For ease of comparison we examine the considerations they made at three broad stages:

- At point of referral ('screening')
- During the statutory assessment stage as a whole (including Human Rights Assessments) and, where approved
- Provision of services

In practice these stages are often not neatly divided in this way, for example services may be put in place immediately (as an emergency) whilst assessments are undertaken.

The first two stages comprise the process of assessing eligibility for services and determining what level of support is required to meet the needs of the child. By looking at a range of data that correspond to these three phases, we can identify substantive differences in approaches between the local authorities in our eight research sites. These are:

- the proportion of families that go on to receive a service after assessment
- the experiences of parents during the assessment process and when receiving s17 services
- advocates' perceptions of the local authority assessment process and support services
- the considerations made by the local authority in the assessment process, the evidence they collect, and the way in which they use these considerations and evidence to build an argument and reach a conclusion; and
- the way in which they perceive their duties to children and families.

Assessments of Children in Need: Screening stage

The assessment of children in need for NRPF families is broadly comprised of two stages: screening and the statutory assessment which includes firstly, the s17 assessment and secondly, the Human Rights Assessment.⁴⁵

The screening stage takes place at the point of referral, usually prior to the local authority engaging in the statutory assessment process. A decision as to what action is required must be taken by the local authority within one working day. This will either be:

⁴⁵ As we saw in Section 4, the human rights assessment is only a legal requirement for families where parents are excluded from s17 by Schedule 3 NIAA.

- Further enquiries taking place in a statutory assessment process (with a maximum length of 45 days); or
- No action by Children's Services and possibly a referral to alternative services (such as the NHS).

For NRPF families presenting as destitute, determining whether the family is destitute or not is a key element of the assessment. A decision to this effect may take place at screening or statutory assessment stage. To reiterate, a child that is destitute is a child in need, which will require services for that child with their family from the local authority under s17 in order to meet this identified need. Broader needs, over and above destitution, may also be assessed (for example, if the child is disabled) and once the existence of these broader needs is determined at screening stage, consideration of these needs and what is required to meet them must take place in the statutory assessment.

If the parent is excluded from s17 by Schedule 3 NIAA, the local authority is legally required to consider whether a refusal of support will breach the family's human rights under the ECHR. This is often done by way of a Human Rights Assessment. Although the Human Rights Assessment is not mentioned in the statutory guidance, it is now a common feature of the assessment process and therefore we include it here as a part of the statutory assessment stage. Usually, the Human Rights Assessment will take place at the later stages of the family's journey through the assessment process.

At the screening stage, local authority interviewees said they were seeking to get a picture of the family's circumstances. Considerations at this stage related mainly to destitution because this was the main presenting concern and/or the basis for which a referral was being made. Of particular concern was whether the need for services was immediate and whether the presenting evidence could substantiate this. This required finding out the family's immediate living situation and making a judgment as to whether they 'looked' destitute. At this point, local authority interviewees were also assessing the credibility of parents, and whether any friends, family, schools or health visitors, could verify their claims. Additional considerations at this stage may also relate to a child's needs due to disability or any other presenting need that may require consideration in the statutory assessment process.

Within one working day, the local authority is required to decide whether a statutory assessment is needed on the basis of this information. There are no standard criteria for this decision across local authorities. A more in-depth assessment of destitution may then take place as part of the statutory assessment stage to determine whether the child is in need under s17 and what services are required to meet those needs, over a period of up to 45 days (see 'Assessment of Destitution' below). During this period, a family may receive temporary s17 services. In practice, local authorities in some research sites would conclude that the child is in need on the basis of information gathered at screening stage and immediately put s17 services in place (in particular, accommodation and subsistence) on the basis that the weight of presenting evidence made it unnecessary to undertake further enquiries.

Parent interviewees reported finding the assessment process challenging. Some were turned away by receptionists before the screening stage, others found that moving beyond screening to secure a formal assessment was difficult. The perception of some parents and their advocates was that local authorities sought to conclude cases at screening stage in order to avoid proceeding to the more substantive assessment.

Rejection of case at screening stage

Local authorities are required to make difficult decisions in a short space of time, often with limited information and evidence of the family's situation available to them, and balanced against competing priorities. Reasons given to advocates for rejection at screening stage, corroborated in some cases by local authority interviewees, suggest however that decisions to deny support to a family may sometimes be made without the evidence that could only be provided through the statutory assessment process. We consider below the reasons they report being given and assess them against the requirements of the statutory assessment process, the legal and policy framework, and the considerations specific to the needs of NRPF children and families.

1. That the immigration status of the family precludes local authorities from providing support under s17.

Where parents fall into one of the four categories of persons under Schedule 3 NIAA they are excluded from receiving s17 support, unless providing such support is necessary to prevent a breach of human rights or rights under EU law. Considering the human rights implications of refusing support (usually by undertaking a Human Rights Assessment) is a legal obligation in such circumstances so that a decision to withhold or withdraw support can only be made lawfully once these considerations have been made.

2. That housing is not a duty of Children's Services.

In general, it is local authority housing departments that provide housing to destitute families under the Housing Act 1996. Families with NRPF have no entitlements under the Housing Act 1996 but can do under s17 so that it may therefore fall to Children's Services departments to assess needs for accommodation if a child is found to be 'in need'. A Housing Department may legitimately decline housing but must refer to Children's Services if they feel that the child may be in need.

3. That families are not eligible because they do not have a pending application with the Home Office.

Destitute families with a pending application have strong grounds for arguing that they are eligible for s17 support following a judgment (*Clue v Birmingham City Council [2010] EWCA Civ 460*) which, as we saw in Section 4, concluded that local authorities have duties under s17 to provide support to destitute families with pending Home Office applications, unless those applications were 'hopeless or abusive.' However, families who have not submitted applications to the Home Office may nonetheless have legal grounds to remain in the UK; grounds that could prevent a local authority from lawfully concluding in a Human Rights Assessment that they could return to the parent's country of origin in order to resolve their destitution.

4. That the family does not live in the borough and that it is therefore the responsibility of a different local authority.

The local authority where the child presents as 'in need' must assess that child unless they are being supported by or are subject to a child protection plan in another local authority. Where there is a dispute over responsibility in this regard, it should not prevent the provision of immediate services should it be found that a child is in need in that area.

5. That the duty is to the child and not the parent.

The duty under s17 is to the child but we saw in Section 4 that there is also a duty to keep families together, which has the effect that support is also provided to parents. The threshold for separating a child from their parent is high and only where a child is suffering significant harm.

6. That they can return to their country of origin.

Reaching such a conclusion requires the local authority to consider legal and practical obstacles to return, whether the child will be in need on return, and whether any breaches of ECHR and EU law would occur should a family return; they may be able to do so with the assistance of Home Office immigration decisions on such considerations.

7. That the family can continue living where they are.

A child may not be considered destitute if it can be established that they are not 'in need' in their current living situation. This needs to be assessed in the context of potential evictions by landlords, friends or family (a common reason for those seeking support).

8. That the children can go and live with the father.

Where fathers have British citizenship or settled status and mothers have no lawful status but responsibility for the children, reaching this decision will need to be based on an assessment which takes into consideration the best interests of the child and other relevant factors, including potential/actual risks and instances of domestic violence.

Whilst advocates and parents saw decisions based on such reasoning as frustrating the process, local authority interviewees were more likely to view it as problem solving and in some instances, as part of their role to maintain a robust 'front-door'.

"what we do is we assess on the spot, so we screen a lot, we gatekeep a lot."

- Team Manager, Local Authority

The extent to which such reasons were reported to be used at the screening stage differed, as did the extent to which those authorities reported to be most resistant at screening stage did provide services to the majority of families referred to it.

Decisions will depend on the presenting facts of each case and there will be instances when it is evident at screening stage that a child or children in the family are not 'in need'. The reasons cited above for a decision not to proceed to statutory assessment, however, would present the risk of children being in need should services not be put in place. Evidence in the next section that shows that local authorities struggle to eschew duties once the statutory assessment process is engaged, suggests screening is nevertheless the stage in the process where services are more likely to be denied.

Statutory assessment process

There was some evidence of reluctance amongst local authorities to engage in the statutory assessment process, emphasising instead the closure of cases at screening stage. Many advocate interviewees said that most of their referrals to local authorities for an assessment were in the form of a 'letter before action'⁴⁶ to the local authority's legal department. In other words they would need to threaten the

⁴⁶ A letter before action is a legal request for statutory duties to be met.

local authority with legal action in order for the family to receive a statutory assessment. This appeared to be more the case in some of the local authority research sites than in others.

Most local authority interviewees held the view that once families were engaged in the statutory assessment process, this most often would lead to services being provided. This was the case in six of the eight local authority research sites. Advocate interviewees, as a result, reported their concern was primarily to secure a statutory assessment, not about the outcome of the assessment itself. In contrast, however, in two local authority research sites, local authority interviewees said that few families progressed from statutory assessment to receiving a s17 service.

Assessment of Destitution made during Statutory Assessment

There is no definition of destitution in the statutory guidance (Department for Education, 2015), no set criteria and no standardised format for assessing destitution under s17. We found, nevertheless, that the considerations at this stage of the process (most often undertaken during screening/initial assessments or in single assessments) were relatively consistent. These were:

- where the family has been staying
- where they are currently staying and reason that they can no longer stay there
- whether they are going to be evicted, and if so, by whom and when
- whether there is food in the cupboard
- the appearance of the children and adults; and
- how urgent is the need.

The crucial difference between authority practice thus appeared not to be the criteria for assessing destitution but rather whether the local authority thought that a parent was credible or not, some local authorities giving the benefit of the doubt whilst others treated presenting evidence with greater suspicion. In this the focus was not on the child but the parent.

“when a family presents at Children’s Services, it’s about trying to establish whether or not the family is genuinely destitute and whether or not the family has given us the true picture of the situation. Are they working illegally but not saying? Are they getting money from friends and family but they’re not saying? There’s not a child centred approach towards a Section 17 assessment. It’s all about the presenting parent; it’s not about the child.”

- Local authority family support worker

The evidence that is collated by local authorities in the assessment of destitution is relatively consistent: bank statements; copies of immigration applications or evidence that applications have been submitted; and arguments made in an application to stay on human rights grounds regarding families’ support networks in the UK. The scope for discretion arises in the interpretation: if a parent’s bank statement shows that they have a mobile phone bill or that they have spent money in a particular shop, for instance, does that prove that the children are not in need? It became clear that some local authorities were more likely than others to argue that parents have funds to meet children’s needs but are not using them appropriately, in some cases concluding that this meant that their claim is fraudulent.

Finally, a key responsibility for providing evidence as part of the local authority assessment process falls on the Home Office. This information is regularly sought but is often not received, a communication challenge explored further in Section 7.

Human Rights Assessments

We saw in Section 4 that Human Rights Assessments have become a method for local authorities to fulfil the legal requirement to consider the human rights implications of refusing s17 support where Schedule 3 NIAA precludes local authorities from providing that support to nationals of EEA countries, refugees granted status in EEA countries, families unlawfully in the UK and refused asylum seekers that have refused to comply with removal directions. This is because local authorities must consider whether withholding or withdrawing s17 support as a result of the Schedule 3 NIAA exclusion would cause a breach of rights under the ECHR (and under EU law in the case of mobile EU citizens). The Human Rights Assessment requires staff to negotiate the interplay of different sets of primary legislation and substantial numbers of test cases, without statutory guidance on those issues, statutory training or a standardised assessment form. These assessments are a significant departure from social workers' core responsibilities: they do not, for instance, assess the 'returnability' of families in any other aspect of their work. With this in mind, we might expect to find that assessment practice varies.

As detailed in Section 4 of this report, a Human Rights Assessment is needed for those covered by Schedule 3 NIAA if there is a legal or practical obstacle to a family returning to the parent's country of origin; and where there is no such legal or practical obstacle.⁴⁷ In the former, the assessment can be brief, simply stating what the legal or practical barrier is and that the local authority will proceed to the assessment of children in need under s17. We found, however, that local authorities in our research sites were not routinely undertaking any Human Rights Assessment in this scenario. Rather, they were undertaking that assessment only in the second scenario when the legal or practical barrier had been removed. Most commonly this was when a family's immigration application was refused.

Human Rights Assessments where there is no Legal or Practical Barrier to Return

Some local authority staff saw the purpose of the Human Rights Assessment as being a mechanism for discharging duties under s17 through withholding or withdrawing support. Exclusion from s17 support is the key aim of Schedule 3 NIAA and conducting the Human Rights Assessment the means to ensure doing so is lawful. Some local authority interviewees reported that they had successfully discharged their duties by withholding or withdrawing s17 support following a Human Rights Assessment, but said that such occurrences were rare in practice, particularly where these assessments were subject to legal challenge. This is because a Human Rights Assessment can prove *in law* that a family can return to the parent's country of origin, but *if in practice they do not return* and the child remains destitute in the borough, s17 duties will continue to be engaged. As will be noted in Section 7 (fig. 12 in particular), removal or voluntary return of these families at the end of the immigration process is rare and local authority interviewees expected that children were likely to remain in need in their borough regardless of a decision that they should leave.

"It's a huge resource required to get to that point where you can say [that they can return to the parent's country of origin]. Ultimately if they still refuse and you withdraw that support you are potentially placing those children at risk so we have nowhere to go legally."

- Solicitor, local authority

Local authority interviewees said that it was difficult for Human Rights Assessments for NRPF families to stand up to legal scrutiny for this reason. In light of this, the Human Rights Assessment has little validity over and above being a procedural requirement:

⁴⁷ Details of what constitute legal or practical barriers to return are given in Section 4 of this report.

“Interviewer: Are services discharged without legal challenge?

Local authority interviewee: We have found that legal challenge is brought against us on the basis of human rights.

Interviewer: And how does that play out?

Local authority interviewee: A lot of the time we’re ordered to provide a service.

Interviewer: So you’re saying you will back down at the point of legal challenge to a human rights assessment?

Local authority interviewee: We’re ordered by the court. We would be threatened with judicial review of our assessment and decision. In [name of local authority] I think we do fair and thorough assessments and so ... we would take legal advice from our legal team and we would stand to the challenge and if necessary go to court to put to the judge ‘this is the situation and this is what we think’. If it does get to that situation sometimes the decision upholds what the local authority are trying to say and sometimes it doesn’t but it’s rare that cases get to that point but of the cases that do get there the judges will tend to order us to provide a service pending some other form of work or investigation or for a further period whilst more enquiries are made.

Interviewer: If that’s the case why do you go that far with the human rights assessment rather than back down before going to court?

Local authority interviewee: Because then what is the point of doing the human rights assessment?”
- Service manager, local authority

Two local authorities with long-established NRPf Teams were not routinely undertaking Human Rights Assessments because of their limited validity in the absence of resolution to NRPf families’ cases, and most local authority interviewees argued that it was difficult to withhold or withdraw support under s17 using the Human Rights Assessment. This is because doing so can only be successful where return to country of origin is the conclusion of this process. If return does not happen and children and families remain and are destitute in the UK, it is the Children Act duty of s17 that is engaged, irrespective of the immigration status of the parents. In this context of limited return and of its limited legal and practical value in these cases, the assessment was seen as time consuming and a strain on staff resources.

On the other hand, some local authority interviewees felt that the assessment was a useful, practical tool for gathering information about the family, for understanding the particular impact of immigration on their situation and assessing the various options available to families. Additionally, some used it as a mechanism for justifying the need to provide s17 services to their managers and as a legal document to demonstrate why local authority funds were being spent. In the case of mobile EU citizens, for whom return was arguably a more palatable option, and for whom a wider range of practical options was available, the Human Rights Assessment was a tool to explore these options and had led to outcomes outside s17 services including routes into work, voluntary return and routes into public fund eligibility, entailing shorter periods of s17 service provision.

Parents’ experiences of the assessment process

Parents’ experiences of the assessment process were often negative, even where the decision was to put s17 services in place. They reported being told to return to abusive partners, to go back to their ‘own country’ and that they feared they would be separated from their children; and feeling

scared, upset, stressed, judged and wounded by their experiences. This was often a result of the process being intrusive and feeling that their stories were not being believed.

“They said don’t get yourself comfortable, you need to go back to your own country. They treat me bad. They stress me. I have high blood pressure and my medication finished about three months ago and I can’t even afford it because if I take the £50, my kids, what are they going to eat after I give them £30 school lunch dinner? They stress me bad.”

- Parent interviewee

It is important to note that the negative experiences of some parents were associated with their contact with housing departments rather than Children’s Services, after being referred to the wrong department and being refused housing-related ‘public funds’ because they had NRPF. Subsequent experiences with Children’s Services may have been better, but their first impressions of the local authority and of being refused services by housing departments dominated their perception of the local authority as a whole.

Fear of being separated from children

Parent interviewees’ fear of being separated from their children was palpable. Whilst some parents realised that the threshold for removing children was high and would be highly unlikely to apply to them, the perception of many was informed by stories they had heard about social services taking children ‘into care.’ For some parents this fear had been realised during their assessment:

“Interviewer: How did they treat you when you went there?”

Parent: Screaming. They scream at you... They saw you, they ask you what do you want, why are you here, you need to go and find their father... we don’t have a house, we don’t do this. You need to go and if you don’t want [to] we will take the children and send you back to Africa. I told her: ‘you can’t take my children from me because I am coming to ask for help. You are the one who said you take care of children so if you send me to Africa you need to send me and my children.’ It’s like you argue with the person and they calm down.”

- Parent interviewee

“They said OK, If I don’t want to go and find place I should give them my baby. I said ‘how can I give them my baby?... I don’t suppose to give you my baby, I’m not a drunk, I’m not smoking, I’m not any... I can look after my kids, I can look after them.”

- Parent interviewee

The views amongst interviewees on what was happening in this regard differed. Local authority interviewees said they did not consider taking children into care at the screening stage of the assessment process (indeed, only a minority considered this to be a legitimate consideration at the end of the assessment process), whilst advocate and service user interviewees claimed that such considerations, or ‘threats’ as they perceived it, happened frequently. This was more the case in London than those outside the capital. Differences in the views of local authority interviewees were however evident on the role of potential separation in the statutory assessment process:

“Hand on heart I think that might have been said a few times to families in the sense that when talking to families we only have a duty to your children, I don’t think anybody would say so therefore ultimately we might take your child into care and you can sort yourself out. No absolutely not, it wouldn’t make sense to do that and it’s not in the best interest of the child and that’s the bottom line.”

- Social worker, local authority

A different perspective was expressed by a service manager at another local authority who felt that poor parental decision-making in the context of their immigration situation could potentially lead to the 'significant harm' threshold that would justify taking a child into care:

"The families that come in that we provide a [s17] service to would be the families that were engaged with the plan and are working towards a goal, whether that be making an application to the Home Office, whether that be returning to their country of origin, whether that be finding a place to live through extended family or friends, they disclose fully their documentation, they disclose fully all the information they've got to enable us to do a comprehensive assessment and then it's easier to work with those families and support them through.

The families who are not really working with us and not really engaged with any assessment process and just want the housing, it's difficult to work with those families and if they don't follow the advice and guidance we're trying to offer and place themselves and their children at risk of street homelessness well then we will offer to bring the children into local authority care."

- Service manager, local authority

Positive experiences of the assessment process

A smaller but not insignificant number of parent interviewees had positive experiences of the assessment process, saying that social workers had been helpful and treated them with respect and understanding. Some parents in this group had also found the process intrusive but accepted this as inevitable.

"I don't believe that if you are capable of working you're supposed to be getting any help. That's my belief. For me to go there it was really hard... I had to get someone to write that I'm homeless and I've nowhere to live and stuff like that... but when I got there the receptionist was all right.... They put me into a hostel situation, which I've never been into before. I got a really good social worker, I was lucky."

- Parent

Variation in parents' experiences in part reflected the approach of an individual service provider with whom they had contact, some being more sympathetic in manner than others. Some parents also had greater capacity to understand why they were being treated in a certain way, to understand that the process was necessary. Positive experiences of the local authority were characterised by a problem solving approach, where parents had not felt judged on their circumstances but instead had been helped to resolve it practically and efficiently. Where the experience was negative, advocates felt this was a deliberate strategy to deter families from seeking support.

Provision of support

Local authorities meet their duty to children in need under s17 through the provision of accommodation and/or subsistence payments to families, and any other eligible need that is identified in the assessment process. In 2012/3, our survey data revealed that accommodation and subsistence support under s17 was being provided to 2,679 NRPf families, which we extrapolate to 3,391 NRPf families. The cost of support for the 3,391 is estimated to be £28m.⁴⁸ While many

48 This sum was calculated using data from our detailed survey of 24 local authorities, first by calculating the average annual cost to support families from the data that was given to us about total spend in those 24 authorities during 2012/3 (£8,245 average per annum) and multiplying by 3,391, our total estimate of supported s17 families across the 174 local authorities.

parent interviewees receiving s17 support described the difficulties their families experienced living on low subsistence rates or in accommodation that they felt was unsuitable, most were grateful for the support they received and felt that the support had substantially improved their lives and those of their children since approaching the local authority as destitute:

“At the end of the day, when they eventually decided to come to our rescue, things became good, our son became, his development became rapid.”

- Parent

Accommodation

Local authorities in our research sites were providing accommodation under s17 in two ways: either in Bed and Breakfast establishments (B&Bs) or in the private rented sector (PRS) with established contractual arrangements with landlords. All local authority and advocate interviewees agreed that B&B accommodation was inappropriate, inadequate and expensive. The Homelessness Code of Guidance for Local Authorities⁴⁹ (CLG, 2006) advises a maximum period of six weeks for placing families in B&Bs. Whilst the case of *C, T, M & U v Southwark Council [2014] EWHC 3983* ruled that the Homelessness Code of Guidance did not need to be followed in the cases of NRPF families supported under s17, it was also stated that long-term provision of B&B accommodation was regrettable, if not unlawful.

Parent interviewees said that B&Bs were cramped (some sharing beds with their children), isolated, dirty, frequently infested with vermin and with insufficient facilities to cook. An example of this was a service user who was required to give a £10 deposit to borrow a kettle; another had to leave to take her children to school before the B&B kitchen opened in the morning. Most often, because of the lack of facilities, families were eating fast food instead of cooking their own which used up a large proportion of their subsistence allowance.

Advocate and local authority interviewees noted that families were sometimes inappropriately placed in B&Bs alongside drug users and those recently released from prison. For local authorities, B&Bs were nevertheless an expensive option.

“I’ve been told that she [the social worker] was paying £85 a night and she was saying ‘do you know how much you cost us here?’ I said ‘excuse me, you were the one who placed me here.’ I don’t want to stay here for many reasons, there were drunk people all the time in the corridors, wee smell, bed bugs. I’ve got pictures of bed bugs, because we were suffering for four months and my son was being bitten, his whole body was having a rash and the GP was really concerned and rats. And when I said that, she said you have to be thankful that you have a roof over your head.”

- Parent

Observations from parent interviewees in private rented sector accommodation were more positive, although some still felt that the standard of the accommodation was poor and a significant distance from their children’s schools. It was nevertheless felt to be more appropriate by parent, advocate and local authority interviewees, giving users more independence, particularly to cook fresh food and making better use of subsistence payments. Local authorities were able to negotiate accommodation rates with landlords, often including utilities and council tax, making the process more efficient and less bureaucratic.

49 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/78411/152056.pdf.

A clear trend was observed in the provision of accommodation. The four local authorities without NRPF teams in our research sites were mostly using B&B accommodation for the duration of families' s17 support. The four authorities with NRPF teams used B&B accommodation in the earlier stages of support then moved families to accommodation in the PRS. The latter four teams had proactively developed policies and protocols for procuring and providing accommodation in order to save money and to provide better quality accommodation to families, whilst the authorities without NRPF teams had not done so.

Dispersal

Lack of availability of accommodation was a major concern in London and the South East, and a lesser but nonetheless significant concern in other areas. As a result, inner London authorities were accommodating families in outer London boroughs and outer London boroughs were dispersing families outside London: one local authority providing accommodation to almost all of their families in one West Midlands borough. Advocate and local authority interviewees in that borough noted that local authorities from across the UK were accommodating families there, possibly in accommodation being provided by a single landlord. Parent interviewees described being assessed and the next day being given a bus ticket to the West Midlands where they would be met at the bus station by the landlord. Whilst local authority interviewees justified dispersal on grounds of cost and being able to provide a better quality of accommodation than in London and the South East, parent interviewees were reluctant to go. Indeed, the offer of accommodation outside London was acknowledged by local authority interviewees as a successful means of discouraging claimants from taking up the support offered to them.

Interviewees from the local authority in question argued, however, that families learnt to like their new area and sometimes decided to stay when they received permission to remain in the UK. This was true for the two parents we interviewed who had been dispersed, not because they liked the area but because they had adjusted to it. The local authority interviewee in that area was concerned that families were being 'dumped' there with insufficient resources that the authority was expected to compensate for. It is also notable here that the local authority was reported not to have checked whether the services provided were meeting the needs of children. Further, having limited contact with families creates barriers to monitoring and reviewing needs of children and families, a requirement that has been established by case law where local authorities are dispersing NRPF families:⁵⁰

"...I get the impression from the families they have no sight or sound of anybody once they're here. If you're going to place them and provide a basic service surely at some point you want to be able to see what kind of environment you're letting these families live in or is it you've done your bit you've provided a roof over their head rather than understanding it goes a bit deeper than that."

- Team Manager, Local Authority Dispersal Area

Subsistence payments

Subsistence payments for families ranged considerably between the local authorities studied in terms of amount, method of payment, the reasoning behind the amount given and in the interpretation of duties to provide subsistence under s17. One local authority was providing £23.30 per child

⁵⁰ In the case of *C, T, N & U v Southwark Council* [2014] EWHC 3983 it was ruled that regular assessments and reviews would need to consider the well-being of children, the wishes of families and the size of available accommodation in the area to which families would be dispersed.

per week and nothing for parents (note: for a family with two parents and one child, this would amount to little over £1 per person per day). Several authorities provided £35 per person (adult and child) per week; another provided £47 per family per week, if they had three or fewer children with potentially an extra payment for larger families. Two local authorities did not have standard subsistence payments, interviewees from one authority explaining that this had resulted from the absence of policies on subsistence rates and decisions by individual social workers regarding what was necessary for families; another arguing that subsistence payments needed to be tailored to the needs of each family depending on their circumstances.

Subsistence payments in all cases were well below welfare benefit rates, below Home Office s95 support for destitute asylum seekers, and even marginally below Home Office s4 'hard case' support rates (see Appendix 2 for details of those current figures). Parent interviewees in receipt of s17 support expressed difficulties in meeting their children's needs on the sum they received. Their concerns focused mainly on being unable to afford enough food. For those in B&Bs this was particularly acute as they were restricted to buying prepared, relatively expensive food in the absence of cooking facilities. Transport, clothing and nappies were other essentials that parents found it difficult to purchase with their subsistence payments.

Some authorities provided additional support in kind such as bus passes, school meals, school uniforms, winter clothing and the fee for immigration applications. They based such decisions on the facts of each case, or responded when families or their advocates requested such support. As a result, one family supported by an authority could receive a bus pass to take their children to school, for instance, when another did not. Where certain needs were being met elsewhere, for instance from food banks, or with school meals and uniforms out of the school's budget, provision for these needs was not met under s17 and in one instance a local authority reported deducting the estimated value of food received from a food bank from their assessment of the weekly subsistence payment needed.

Lack of free school meals was a particular concern for parent, advocate and local authority interviewees. Only children whose parents receive 'public funds' are entitled to free school meals. A few schools paid for these children's school meals from their own budgets. Some parents paid for their children's school meals out of their subsistence payments.

Most local authorities provided subsistence payments in cash, either with families picking it up from Children's Services' offices, or administered via the Post Office or a payment card. Two local authorities supplemented food parcels or food bank vouchers with cash. One local authority using payment cards received regular reports from the bank so that they could monitor what parents were spending their subsistence payments on. They argued that this was to ensure the payments met the needs of children and to protect the local authority from risk.

"We have a copy of their receipts. I think it's the Royal Bank of Scotland we're using for that and so what they do is send us a copy of the receipt because we need to ensure when we support them we do not enter into any litigation if they use the card to buy porn or anything that can impact on the council in a bad way. That's why we monitor the card to ensure that first of all they're buying food for the kids and themselves or the kid and they're not buying illicit or illegal stuff."

- Local authority team manager

Of concern for advocate interviewees was a reported tendency for some local authorities to provide families only with accommodation and not provide subsistence unless challenged by families

or their advocates. This was reported in London with just one reference to it occurring elsewhere. Local authorities were thus meeting the immediate need for accommodation whilst withholding information about the potential availability of subsistence of which families might be unaware or unable to challenge.

Parent interviewees had to find ways to manage to survive on these small subsistence payments, such as buying food in bulk or shopping only in charity shops. Our voluntary sector survey revealed that a number of families continued to rely on support provided by the voluntary sector (eg foodbanks) whilst still being supported under s17 by local authorities; some local authorities in our research sites took such provision into account in the setting of subsistence rates. Many expressed gratitude for the financial support they received while most said it was not enough. Those with older children found it difficult to manage their children's expectations as they were at an age to understand that they were different to their peers, unable to participate in activities that they enjoyed.

Litigation on subsistence rates for NRPF families under s17 is fast moving and perhaps not yet settled. A recent test case (see Section 4)⁵¹ found it was not inappropriate to provide families with subsistence at s4 IAA rates (£35.39 per person per week). In general the courts have viewed the setting of subsistence provision under s17 as a local authority responsibility, rather than that of the court. Some key points of guidance from the case law are that there should be a rationale behind subsistence provision – the rates set and additional services provided – and that whilst having consistency within a local authority is lawful, there needs to be flexibility to meet the specific needs or account for the specific circumstances of particular families. Our evidence does not show local authorities in our research sites significantly departing from these principles, despite the low rates we have reported. Some authorities in our research sites were failing to meet statutory duties in some respects, for example by not offering s17 payments to adults as well as children, or by not having a subsistence policy that is publicly available.

Notwithstanding that the low rates of subsistence may comply with recent case law, it is striking that they are not only well below welfare benefit rates but below Home Office s95 support for destitute asylum seekers, and even marginally below Home Office s4 'hard case' support rates. It is these very low rates of support that NRPF families receive under s17 relative to other children and families, coupled with the fact that this is provided for considerable periods of time (see section 7) that raises concerns relating to the long-term impact on children, given what is known from past studies on the consequences for child development and life chances of living in poverty (Stewart, forthcoming; Cooper and Stewart, 2013).

Additional support

Some local authorities in our research sites were more likely than others to keep in touch with families regularly, to have a policy of allocating social workers to supported children and to link families with other local services such as children's centres. These tended to be the local authorities with more child-focused than adult-focused assessments. Elsewhere, contact and support beyond accommodation and minimal subsistence payments was rare.

There were several families in which children with disabilities/complex needs were having their needs met through other teams in Children's Services. Those children did not appear to be treated differently in that respect to other children.

⁵¹ *Mensah & Bello v Salford City Council* [2014] EWHC 3537.

What might explain variations in practice?

Our evidence indicates a series of factors that explain the variations in local authority practice we have identified: in the considerations that are taken into account in assessments, for instance, in the timing of decisions in the assessment process and in the kinds of services they provide. Three factors in particular stand out: the strength of local advocates; whether there is a dedicated NRPf team; and the way in which the issue is framed by the staff concerned.

(i) Role of local advocates

One clear factor in variations between and within authorities in our research sites was the impact of a family having support from a local voluntary organisation and/or a solicitor who challenged, or could potentially challenge, the authority's assessment and decision. Some local authorities studied had never received a legal challenge, where others were routinely receiving letters before action, requesting assessments of need for destitute NRPf families. One London voluntary sector organisation estimated that 85% of their referrals required a letter before action before any action was taken. The role of advocates was particularly important at the point of crisis and in relation to securing an assessment. Advocate interviewees expressed less concern about the quality of assessments once the formal process had begun.

Provision of advocacy support was more available in some local authorities than others. Pockets of innovative practice and in-depth knowledge were observed amongst voluntary sector advocates and solicitors engaged in this field. However, it was evident that the strength of advocates was variable in terms of capacity and their knowledge and understanding of this complex area of law. In some cases, understanding of local authority duties was limited. Interviewees at one voluntary sector organisation, for instance, thought that they could only advocate on behalf of families that did not have a pending application if they had a disabled child, or a child with a complex medical or mental health problem, as they incorrectly believed that only these circumstances would bring families within scope of s17. In one local authority area, only one voluntary sector organisation was identified as doing advocacy work with this group of families and the local authority only rarely came into contact with them. It was in these two areas where local authorities were rejecting a significant proportion of referred families at the point of formal assessment.

Voluntary sector services appeared to be becoming more responsive to the needs of this group as their needs become more visible and better understood. Our survey of the voluntary sector found nonetheless that it is in the most part smaller local organisations, including faith-based organisations, that are providing services to this group, rather than larger charities. Services set up for asylum seekers and refugees in some areas have been adapted to meet the needs of these families. As such, expertise around entitlements to s17 has emerged:

“When the service was being planned it wasn't set up as a service for non-asylum seekers, it was a response to the need. I think my experience of trying to, even within [this organisation], trying to explain this as an issue and the needs of these families is very difficult because people with either say you're dealing with asylum seekers and refugees which is an understandable narrative if you say about fleeing persecution that's easily understood and put in a box, or people will say 'ok these are poor families so they should apply for benefits' ... and not understanding the complexities around their rights and entitlements. It's about visibility and understanding this issue; people just don't talk about families with no recourse to public funds. When a family in that situation does approach an agency they will often say we don't know what to do and will turn them away.”

- Voluntary Organisation Project Coordinator

In some areas services were yet to meet the need for advice and advocacy support for those seeking s17 support or with potential eligibility for it. This was in spite of a range of support being provided through the voluntary sector in those areas such as food banks, destitution support and drop-in support that was helpful to NRPF families but not tailored to their particular situation.

One explanation for the challenge facing voluntary sector organisations in this respect is that many not only have a specific focus on asylum seekers and refugees, with expertise on the distinct legal provisions that relate to them, but are funded for that purpose. Comparing data from our voluntary sector and local authority surveys, it is possible to see a disconnect between the profile of local authority-supported families and that of voluntary sector-supported families, the latter including a larger proportion of asylum seekers and refused asylum seekers who could access destitution support from the Home Office rather than other categories of people that could be eligible for destitution support from Children's Services departments.

Some voluntary sector interviewees considered that ideas of deservingness deriving from public discourses on migration and the variable 'values' attached to different groups of migrants also has an impact on voluntary sector practice. NRPF families which had not sought refugee status could be seen as less deserving than those who have sought protection through the asylum system.

(ii) Dedicated NRPF services and staff responsible

Local authorities with dedicated NRPF teams in our research sites were considered by interviewees, both within and outside of local authorities, to be more internally consistent in their approach. Having a clear point of contact within the local authority was also felt to be helpful for advocates, making the referral process more efficient. Those working in dedicated teams had significant expertise on the way in which immigration law and policy intertwines with children's legislation. This manifested itself in a confidence and fluency with which they talked about issues, and breadth of experience working only with this particular group of families.

Having a dedicated NRPF team did not however necessarily lead to consistency across local authorities. Each of the four case study authorities with dedicated NRPF teams were quite different in approach, one having a more adult-focused assessment process and therefore a higher threshold to accessing s17 support, whilst the other three were significantly more child-focused.

Local authorities with dedicated NRPF teams were procuring accommodation in the private rented sector and only using B&B placements as temporary measures, felt to be better for families and cheaper. Two of the NRPF teams were staffed mainly by caseworkers rather than social workers, and these teams tended to conceive of their duties to these families as administrative tasks, where, following assessment and setting up services, little contact was maintained with families. The other two teams were staffed mainly by qualified social workers and here children were more likely to have an allocated social worker and to be linked in to local services. This suggests that the staffing of the team may be significant for practice in relation to children in need as well as the existence of a dedicated team.

In local authority research sites without dedicated NRPF teams, voluntary sector interviewees were more likely to feel that assessments and decisions reflected the personality of the member of staff. Similarly to the four local authorities with dedicated NRPF teams, the authorities without such teams had diverse approaches, some with more adult-focused and others with more child-focused assessments.

(iii) The conceptual framing of the issue

A key factor influencing variation in practice is the differing perspectives of Children's Services staff on the role they feel they should play in relation to these families. This manifests itself, first, in the way that ideas of 'deservingness' inform their approach. This is not a legal concept that local authorities can apply in their assessments, but rather a value-based conception of families that informs assessments. Certain assumptions were expressed in interviews and relative deservingness cited as justification for withholding support, notwithstanding that the legislation that frames local authority duties does not give local authorities powers to assess the relative deservingness of different groups of people in this way. The principle criterion is whether the child is destitute and therefore in need, irrespective of their immigration status.

"A negative attitude towards them as a client group can be reinforced by the Home Office saying they should all go back [to their country of origin]. It does go on all the time, like in the talk about fraud. You hear people saying that the family has probably got other people staying in the house who are not supposed to be there. They ask why are we dishing out money to them when other people need it. The tone isn't one of understanding but questioning."

- Team Manager, Local Authority

"Within the initial assessment it is very much needs led for myself. I like to keep it that way, I think when you look through the lens of immigration, that's when you start to be the gatekeeper and you start to label people as deserving or undeserving, or eligible or not eligible. I think that's not the purpose of an assessment of children in need."

- Social worker, Local Authority

Secondly, there was variation in the degree of attention given to children vis-à-vis parents in the assessment process; this impacts the extent to which the local authority had a child-focused or an adult-focused assessment process. While some authorities are focusing on the needs of the child in their assessment practices, others give greater weight to the immigration status and credibility of the parent in determining children and families' eligibility for support:

"I think we take our duty, it's the simple truth, we take our duty under Section 17 very seriously and we also recognise that children are children at the end of the day, they are not part of the cause of the circumstances where that family is... If you develop a policy or strategy of punishing the adult because of the decision they've made, the children are in the middle, they are in the centre of it and they are going to be the ones that suffer."

- Deputy Team Manager, Local Authority

Some Children's Services staff were more likely to emphasise the needs of children over and above the limits placed on them by immigration status of the parents and the extent to which they were felt to be credible.

"When we receive referrals it's... I like to see them as a child and not a child within a family that has no recourse to public funds, because I think when you start labelling them you do start to treat them differently and you shouldn't, because the reason for the referral is that this child is at risk of harm. That's the bottom line and whether it relates directly to neglect through poverty because of their status, that really shouldn't matter, that's really a formality. The real issue is with the needs of the child and how well protected they are. For me, that's how I focus my assessments: what are the risks, what are the needs, how are we going to help to meet those needs?"

- Social worker, Local Authority

The relative child- or adult-focus of the assessment resulted from the degree to which immigration considerations and the credibility of parents featured in this process: child-focused assessments were more likely to disregard the immigration context and to give parents the benefit of the doubt in relation to their situation of destitution to focus on the needs of children, whilst adult-focused assessments were more likely to use the immigration decision-making of parents and question their credibility as a reason for seeking solutions for families outside s17.

Additionally, there appeared to be different views between authorities of the appropriate role of the local authority vis-à-vis parents and communities in supporting these children. Those authorities that expressed views which suggested they thought the state should do less and communities more had a higher threshold for engaging s17, whilst those with a lower threshold appeared to be more comfortable with local authorities having a role to play in supporting these children. The criteria for selection of local authorities in the study included political control to enable us to consider if this could be one factor accounting for variations in practice. The two local authorities identified as having a higher threshold for engaging s17 were both run by Conservative administrations. Staff within those local authorities were more likely to express the view that the local authority's involvement in the cases of these families should be minimal. Five of the six with lower thresholds were run by Labour administrations. However, one of the authorities with a lower threshold was run by a Conservative administration, indicating that political control alone is not a determining factor.

The London context

The greater level of demand for services in London may account for a perception among some interviewees that London local authorities take a different approach to those outside the capital:

"It seems to be...the London authorities when they're doing the gatekeeping or when they're saying they're not going to help they seem to know that what they're doing is wrong... I do find the further out from London you go, they don't appreciate that actually what they're doing is not lawful they just think it's fine and you have to really point out to them what they're doing is wrong and why they're wrong."

- Voluntary sector solicitor

Two London authorities in our study did have a high threshold for accessing s17 support. However, two of the authorities outside of London also had very large caseloads, but a lower threshold for accessing s17 support. Those authorities said that their approach derived from a pride of place that was inclusive of all residents and the diversity of their city. While in some authorities the number of NRPF cases within the case load of Children's Services had not warranted any attention by the leadership of the authority, in these cases the child-focused approaches of the NRPF Teams had been endorsed by elected representatives and/or senior management; the balance of concerns relating to safeguarding risks facing children being given greater weight than the costs of providing support:

"[Name of local authority] is a people pride place, we invest in people and we are proud to be [name of city] and we want people to want to be in [name of city] and that comes with a lot of social challenges and I think we recognise that. That is why this team is in existence and that is why we've got the funding. This team recognises that those [name of city] residents that are in those circumstances because of their immigration issues, in a lot of those cases there isn't an issue with their parenting capacity or how well they look after their children...those families need to be supported and given advice, and I am confident that it is a topic that has been discussed at senior management level and approved at that level as well."

- Deputy Team Manager, Local Authority

Not all local authorities outside London shared this approach. Many local authority interviewees felt that their neighbouring boroughs denied services to potentially eligible families at the point of referral, resulting in those families approaching other authorities. In some instances, it was thought that families were being told to approach authorities that had dedicated teams and more experience of working with this particular group of families, although case law states that it is the responsibility of the authority where the child presents in need to undertake the assessment. The perception that this nevertheless happens was corroborated by parent interviewees, a significant number of whom initially approached another authority but were referred on.

Summary

Our findings thus suggest that, within their broader responsibility to assess and provide for children in need, local authorities are responding to families referred to them because they are destitute and have no recourse to public funds. The numbers are small compared to their caseload of children in need, but not insignificant for a small number of local authorities. Staff have statutory guidance on s17 cases, but not on the particular and complex issues that arise in relation to those whose evolving immigration status is one key factor in whether support should be provided and for how long.

The over-riding responsibility of the authority under s17 is to safeguard a child who *'is unlikely to achieve or maintain a satisfactory level of health or development, or their health and development will be significantly impaired, without the provision of services'*, and to do so wherever possible within the family. Our findings suggest that in practice some authorities are indeed highly child-focused in their assessment processes; others give greater attention in their decision-making to the circumstances and credibility of the parents in relation to their immigration situation and claim of destitution. Some authorities operate a higher threshold for securing access to support, and there is some evidence of a reluctance to move beyond the early screening stage to conduct a full assessment of the child and family's situation, not least because once that process has begun it is rare to find that s17 responsibilities are not engaged. Three factors appear to have the greatest impact on variation in practice: the extent to which external advocates support families, engaging with and challenging local authority responses; whether there is a dedicated NRPF team or staff within the authority; and the perceptions of the staff in relation to the entitlement of NRPF families to support and extent to which local authorities rather than family and community should provide it.

Accommodation provided, particularly when in Bed and Breakfast is often, local authorities agree, unsuitable for children and thus un conducive to their physical, emotional and social development as the Act requires. Subsistence rates provided are exceptionally low, below even those rates provided by the Home Office for refused asylum seekers. As a result, parents struggle to provide their children with the essentials of life, casting doubt on whether the letter and the spirit of the law, in relation to these children, is in all cases being met and raising questions about the long-term effects on children living in poverty.

7. Case Resolution and Outcomes

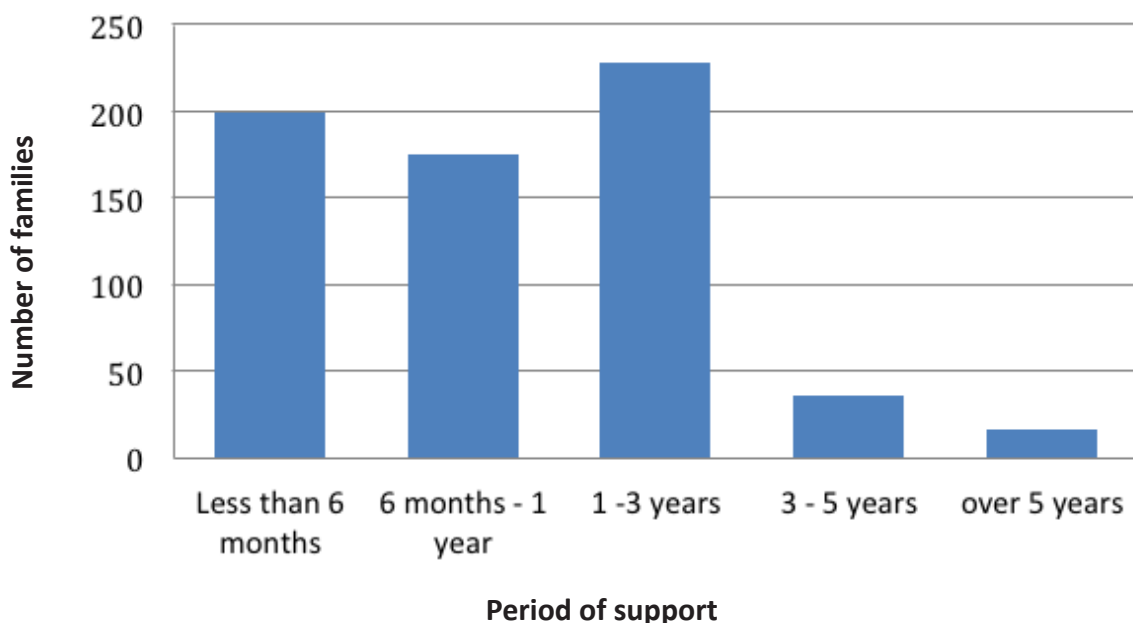
For mobile EU citizens, resolution of their situation so that they no longer need s17 support is reliant on parents entering the labour market and becoming self-supporting, returning voluntarily (enforced removal is highly unlikely to be an option for mobile EU citizens) or accessing mainstream welfare benefits. The latter option depends on a decision from the Jobcentre and the local authority Housing Department to grant access to public funds on the basis that they meet the requirements under EU law. For 'Zambrano carers' of British children, permitted to work, resolution of their need for s17 can be through securing access to the labour market.

Local authorities are, however, reliant on the Home Office to resolve the immigration status of most of the families that they are supporting under s17: resolution that may result in removal from the UK or a grant of legal status that no longer necessitates the family's reliance on local authority support (with the exception of those granted Limited Leave to Remain (LLR) under certain immigration routes with no recourse to public funds who may still need support).⁵² The length of time that it takes to resolve immigration cases is thus crucial to the authority and, we found, a matter of considerable concern.

Quantitative data from the detailed survey of local authorities is used to analyse outcomes in addition to qualitative data drawn from interviews with parents, advocates and local authorities.

Our survey data shows that while 30% of local authority s17 NRPF cases are provided with support for less than six months, more than a third receive support for between one and three years and 7.3% over three years. In most cases (at least 71% - see Fig 11) applications to resolve the immigration status of the families are pending.

Figure 10 – Length of time families are supported by local authorities

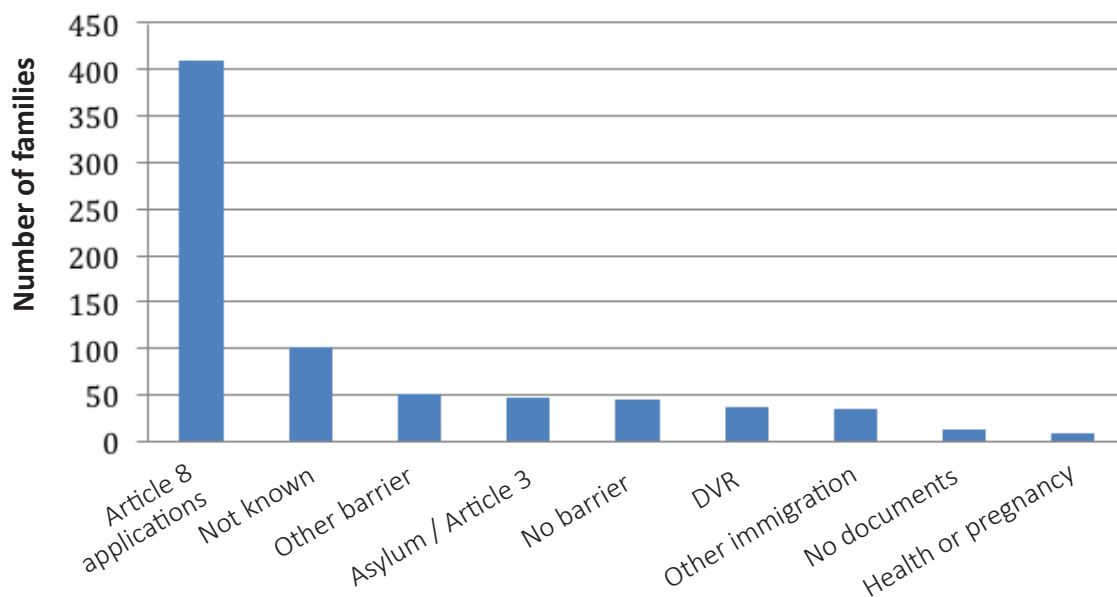


N = 772 families

⁵² For those granted LLR on the condition of NRPF resolution depends on parents entering the labour market (as they have a right to work) and becoming self-supporting so that the child is no longer 'in need'.

In the vast majority of cases, local authorities reported that the legal barrier to return to country of origin for NRPF families is an Article 8 ECHR (right to family life) application to remain, with a smaller number of applications for other forms of immigration status, or applications under the Domestic Violence Rule (71% in total). Other barriers to removal were on grounds of health or pregnancy, or a lack of travel documents. As Figure 11 shows, authorities could not in all cases identify the legal issues at stake.

Figure 11 – Barriers to return to country of origin for NRPF families

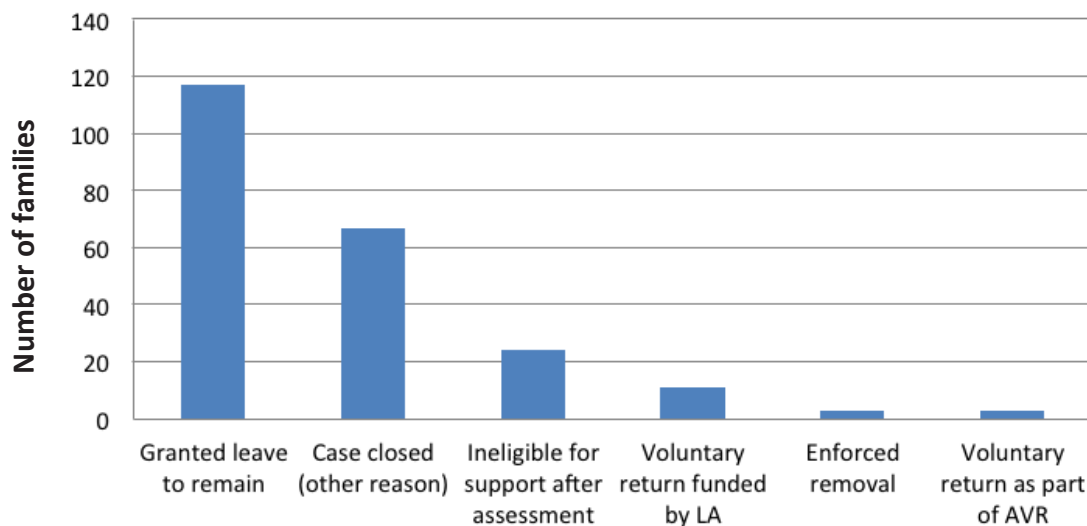


N = 747 families

Means of case resolution

Local authority survey data on case resolution shows that in the majority of cases families are deemed eligible to remain in the UK.

Figure 12 – Means of case resolution in 2012-2013



N= 224 families⁵³

53 This figure is low as a proportion of all families included in the overall sample, because only a fraction of the families had their situation resolved in this particular financial year (2012/3).

Where a case is categorised as 'case closed (other reason)' this is in some cases because the individuals are mobile EU citizens and may become eligible for public funds or find work. A local authority may also incentivise return: offer to pay their bus fare and remind families they will be entitled to welfare in their home country. There was less evidence that they do this in relation to families from outside the EU. Even for mobile EU citizens however, that was not always an option:

"you can't just say there's a bus that leaves for Bulgaria tomorrow and you've got a sick child. You may have come to the end of the line and we would ordinarily be encouraging you to go home and seek the support you're entitled to at home but there has got to be something safe"

- Solicitor, Local Authority

The Family Returns Process, a Home Office system for removing families with dependent children where their parent is an overstayer or is from other immigration groups listed in the operational guidance,⁵⁴ was not mentioned by interviewees, and overall numbers of returns, both voluntary and enforced, were low. Local authority staff can be puzzled as to why the Home Office does not work with them more closely to prioritise those cases where there is no apparent obstacle to removal; where there is no older child for instance so that 'private life' under Article 8 ECHR is less likely to have been established; and likewise, why they do not resolve more quickly the cases where it is evident on the facts of the case that they will eventually be allowed to remain and no apparent purpose is served by delay.

Each application requires attention by a Home Office case officer to the particular circumstances of the family. Cases can be complex, not least when a family's circumstances change during the course of the process. The evidence provided with the application has to be checked, payment received (unless they qualify for a fee waiver), and a refusal may be challenged in court or followed by a new application, all taking time. The facts of each case will mean that the length of time it takes to resolve cases will differ. Our evidence suggests, however, that there may also be problems in the administration of cases which are causing further delays. We cannot check the individual experiences that were reported to us by local authority, voluntary sector and parent interviewees. However, the consistency with which we were told that applications, passports or photographs had been lost within the Home Office; of delays over a period of years during which applicants received no information on the progress of their case; of letters and phone calls repeatedly unanswered, and the occasional explanation that the case had been in a 'backlog', suggests that there may be a systemic problem in the management of these cases. This finding would be consistent with the finding of the Independent Chief Inspector of Borders and Immigration (ICIBI) that significant process improvements are needed in case handling more broadly, including the handling of cases of overstayers (ICIBI, 2014a). In his report for 2013/4, the Chief Inspector found measurable improvements but reported:

"I still find too much evidence that the Home Office does not get the basics right. This includes the quality and consistency of decision making but also having caseworkers with the right skills, aligning resources to the right priorities and having high quality management information that provides a sound basis on which to make decisions on future strategy and resourcing." (ICIBI, 2014b:6)

54 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/398601/CH45b_v3_EXT.pdf.

Communication barriers

Challenges in the administration of cases appear to be aggravated by poor communication between local authority and Home Office staff. Local authority staff referred to effective working relationships in the past but that there had been a deterioration in recent years. Meetings that had once taken place regularly with local Home Office teams no longer happen:

“That was really helpful, we had a good relationship, we could contact them if we had a new family that came to us – can you do checks, make sure this person is known etc.? Is there anything we need to know about or anything that you need to know about? “

- Team Manager, Local Authority

Local authority interviewees reported that they no longer had a named individual to contact and found it difficult to get through to anyone relevant to the case. Complaints from one local authority's solicitor reminding the Home Office of its responsibility under Section 55 Borders, Citizenship and Immigration Act 2009 to deal with families as quickly as possible had led to quicker resolution in those cases.

Local authorities have a duty to inform the Home Office of families that approach their services who have irregular immigration status (specifically those unlawfully in the UK and refused asylum seekers who have failed to comply with removal directions). Local authority interviewees reported meeting this duty, but finding that the information flow can be one-way, with no response or apparent effect.

When local authorities ask for immigration status checks on parents who are requesting s17 support in order to verify information that is provided by families or to determine that information in the absence of documentation, it can take up to three weeks to receive a reply from the Home Office. The immigration status of families determines which assessments are required (i.e. whether Schedule 3 NIAA applies and a Human Rights Assessment is needed), but local authority interviewees said that assessments were having to be undertaken in the absence of information provided by or verified by the Home Office.

Local authority interviewees did not want to rely solely on information from parents but to verify information that would inform the assessment process, including the options available to families; for example: whether parents may in fact have permission to work, whether they have a pending application with the Home Office, or whether they might be eligible for support from the Home Office as asylum seekers under s4/s95 IAA. Home Office rules constrain what the local authority can do but the authority needs their information in order to undertake assessments of eligibility and to understand what options are available to families. As one social worker said, *“when we need assistance from [the Home Office] to help us ... [they're] the first ones to shut the door.”*

In the absence of interviews with Home Office staff handling these cases we could not explore the context for these concerns or means of resolving them. Setting up the NRPf Connect database (see Section 4) is intended to address these communication issues for participating authorities and any monitoring of its impact or subsequent research could establish if it achieves that objective.

Advocate interviewees acting on behalf of individuals similarly reported difficulties making contact with an individual in the Home Office who could provide any information on the progress of the case. Parent interviewees were frustrated by the lack of a named individual they could contact and

that their correspondence or change of circumstances did not always appear to reach the person dealing with their case. The lack of any dealing face-to-face with a case officer compounded the communication difficulties.

"They never wrote to us and every time we phoned them or wrote to them they said when they make a decision they will contact us...no one is forthcoming and no one will give you a direct answer."

- Parent

Parents could find themselves caught between pressure from their local authority to resolve their case and inability to progress it. Advocate interviewees reported cases where local authorities insist families contact the Home Office to press for a response or to arrange voluntary departure, saying they would only continue support if evidence was produced that they had done so. In other cases local authorities sought to liaise with the Home Office on behalf of their supported families, to encourage the Home Office to speed up the decision-making process.

For all parties the lack of communication caused frustration, and for the families waiting for their case to be resolved, disconnect between what felt like an impersonal, unresponsive system and the overwhelming importance of the outcome to their future lives.

Implications of delays

For local authority interviewees, the process in relation to these cases is one of waiting for resolution of immigration status. Some are proactive in seeking to ensure that their families have access to legal advice, one authority commissioning services from a local law centre to provide immigration advice to their supported families in order to speed up the case resolution (these immigration cases mostly being ineligible for legal aid).

A family is not necessarily removed after receiving a negative decision on their immigration case. They may have a right to appeal, request reconsiderations, or submit fresh representations, and meanwhile local authorities continue to have duties under s17 to children in need, as long as they are destitute.

"...[their case] gets declined, they appeal and we carry on paying, it gets declined they appeal and we carry on paying, it can go on. One case that I was holding was a year and a half we were paying for them to stay in a women's refuge."

- Social worker, Local Authority

Amongst local authority interviewees, there was little expectation that the families would eventually be required to leave the country.

"It's quite a tricky one really because it's waiting for their status to come through, very few cases close for any other reason...I've never seen a family removed. I do know that a few of the children's fathers have been removed for different reasons, in terms of crimes, stuff like that. But I have never seen a family removed."

- Social Worker, Local Authority

Our survey data indeed shows that only 1.3% of families supported by responding local authorities whose cases were resolved in the financial year 2012/3 were forcibly removed (Fig. 12). There was recognition among local authority interviewees that this is because removal is difficult to achieve.⁵⁵

Nevertheless it means that local authorities are often in the position of having to continue support until a final case resolution and there is some resentment that the cost of the delay is borne by the local authority:

"It can take years to remove and actually it's not their problem because they are not paying for them, it's our problem. Their answer is remove them [the children] into care and we say we're not going to do that, so we're just left."

- Team Manager, Local Authority

"The Home Office could relieve 70 or 80% of the issues that Children's Services face with those families, not to mention the family, because they take such a long time to give a decision, really they need to either give a decision or remove. They need to do that a lot sooner because I think it's a waiting game and they're just waiting and waiting and waiting."

- Family Support Worker, Local Authority

For families, it is a period of uncertainty and material hardship, but preferable to leaving the UK. Interviewees expressed feeling in limbo, as in this case where their case remained unresolved after fourteen years:

"I can't go forward I can't go back, it's no way to live for anybody. All you want is a yes or a no... The kids as well, they are totally insecure and not sure of the future. [My son] is 17 and he can't open a bank account, he can't apply for his driving license now. It affects every single one of us. It's awful. ... I did everything by the book and I am still waiting for an answer to say what the problem is."

- Parent

There was some sympathy for the situation in which local authorities find themselves amongst voluntary sector interviewees, recognising their inability to resolve the cases while critical from their experience of the way in which immigration cases are handled.

"I think it is very much seen within the council as central government washing its hands of this group of people and leaving the local authority to get on with meeting their basic subsistence needs and... the central government body responsible for dealing with the application is not even doing that properly, professionally or competently."

- Director, Voluntary Organisation

Lack of case resolution colours the whole process for local authorities: once cases are accepted for support the likelihood is that they will only finally be resolved through the granting of status and that support will need to be continued throughout that process, however long it takes. This contributes to the difficulty families have in securing acceptance that they need support when they first approach the local authority.

The slow speed of case resolution also makes each case more difficult to resolve because over time families become more settled in the UK and acquire a stronger case to remain under immigration law.

⁵⁵ Whilst attempts to streamline removals are included in the Immigration Act 2014, it is not possible given the period of fieldwork of this study, to assess the impact of this legislation on local authority s17 supported families.

8. Conclusion

In this study we have explored the implications of a tension between two policy objectives: on the one hand, to restrict families' access to the welfare state as a means of managing migration and curbing public expenditure and, on the other, to safeguard and promote the welfare of all children 'in need'; that is, children whose health or development is likely to be significantly impaired without the provision of services. Wherever possible the Act requires that children be protected within their families.

We have been concerned, in particular, with the provision of accommodation and subsistence payments by Children's Services departments of local authorities to destitute families who are excluded from welfare benefits because, as a condition of their immigration status, they have 'no recourse to public funds' (NRPF). Support under s17 does not fall within the definition of the public funds from which they are excluded and has become the safety net for the small number of NRPF families with dependent children that become destitute.

Restricting families' access to mainstream welfare benefits while providing a local safety net for children in need has the effect of shifting responsibility for supporting destitute families from central to local government. In effect, this local authority safety net constitutes a parallel welfare system to centrally-funded mainstream welfare benefits. Local authorities have seen a rise in the number of such families they are supporting in recent years to an estimated 3,391 (and 5,900 children) in 2012/13; a small proportion of the children deemed to be 'in need' in the UK but significant for a few local authorities within and outside London. In 23% of those families, there is at least one child who is a British citizen.

Local authorities must meet their accommodation and subsistence duties under s17 to NRPF children and families as part of their broader s17 duties without funding from central government to account for this specific cost. Nor does the statutory guidance on s17 account for the particular considerations relating to this group of families.

Our 18 month study, involving a survey of local authorities and of the voluntary sector, eight local authority research sites and 92 interviews, was conducted to explore the implications of this arrangement for local authorities and for the families concerned. We found that there is considerable discretion in how the assessments and provision of services operate and variation in practice. Some have a strong, child-focused assessment process, others a greater focus on the immigration status and credibility of the parents.

Families' overwhelming need at point of referral to the local authority is for accommodation. They have generally been in the UK for a considerable period of time, are well integrated and were not reliant on the state until a crisis provoked their referral. Precarious living and relationships of dependency expose some parents and children to exploitation. Where support is provided, subsistence rates are well below minimum welfare benefit levels and below those provided for refused asylum seekers. Accommodation is often in B&Bs, which local authorities acknowledge are unsuitable for the welfare of the child. Parents' reasons for remaining in the UK despite the hardship and insecurity it entails largely relate to the future education and welfare of their children.

While responsibility for supporting these families falls to local government, we saw that resolution of many of these families' cases can only be achieved through the immigration system, a central rather than a local government responsibility. Local authorities are dependent on the Home Office

to check the immigration status of families seeking support, for resolving outstanding applications to remain in the UK, and for either removing the family or granting legal status so that s17 support is no longer needed. The evidence suggests there are administrative problems in the Home Office and communication difficulties between them and local authorities that contribute to delays in resolving the immigration status of these families and hence their length of time receiving s17 support. Families, as a result, remain in limbo for considerable periods of time. Significantly, most are eventually granted leave to remain in the UK. The recent establishment of the NRPF Connect database of cases, with which the Home Office is engaged, may help to resolve some of these concerns.

From these findings, we conclude with four observations.

First, the Children Act is providing a vital safety net for those children whose parents are excluded from mainstream welfare benefits and who face safeguarding risks through destitution and, in some cases, their parents' dependency on exploitative relationships. Children's Services departments of local authorities are, through the provision of support under s17, providing a lifeline for those children and their families.

Second, the level of support Children's Services are able to provide is limited by the fact that local authorities must provide support to NRPF children and families as part of their broader s17 duties without funding from central government to account for this specific cost. Many children as a result are placed in unsuitable living conditions and survive on subsistence rates below those deemed minimal for any other category of people in the UK. In many cases this reliance on s17 support will continue for more than a year; in the case of 7% of families, for more than three years. Yet child poverty is rightly a matter of concern across the political spectrum because of the long-term consequences for the child's health and development, education and employment outcomes.

The absence of statutory guidance on the steps local authorities should take in relation to NRPF cases may contribute to weaknesses we found in their screening and assessment processes and inconsistency in the levels of support they provide. We do not know the implications for those children whose families are denied support. Local authorities' expectation, moreover, that support may be needed for an extended period, colours the whole process. Once it is accepted that a child is in need, support for the family may need to be continued, where immigration applications are pending, until their immigration status is resolved, however long that takes. This contributes to the difficulty families have in securing acceptance that they need support when first referred to the authority.

Local authorities are, in essence, caught between their duty to safeguard children in need and their inability to resolve the underlying cause of the child's destitution; reliant in many cases on the Home Office to resolve the family's immigration status. That process, we saw, can extend into years and communication between the Home Office and Children's Services staff during that time is limited. It is the length of time for which local authorities have to provide support, the inadequate level of support provided, the communication difficulties between the two tiers of government responsible for these families and the need to resolve the cases of those who have not or cannot be removed, that needs to be addressed. In its operation, this is a dysfunctional system in which children are the ultimate losers. It leads us to question whether the fundamental aim of s17 of the Children Act – to safeguard children in need – is, for this group of children, always being met.

Finally, we note the key role which parts of the voluntary sector are playing in providing material support to destitute NRPF families, not least through food banks and in their advocacy of destitute families to secure support from the local authority in whose area they live. There are nevertheless significant gaps in the geography of this support, and in the levels of expertise in this complex area of law, which in turn we saw impacts on how local authorities respond to families seeking support. This is a dimension of this issue which those managing and funding voluntary sector organisations in the children and migrant sector may want to address.

Implications for policy and practice

There is a range of steps which could be considered to address this situation.

The use of the 'No recourse to public funds' restriction as a means of immigration control – whether it is necessary and proportionate or alternatives could be deployed – is beyond the scope of this study. We suggest only that **our findings should be taken into account in any review of the extent to which the NRPF restriction is used, not least for people who will be in the UK for long periods**, recognising the implications for children in the small minority of families that become destitute and financial consequences for local authorities.

The impact on local authority budgets could be addressed by reducing the time taken to resolve cases, and by targeted, grant-funding from central government, based on an agreed set of criteria and standardised definition of destitution. That support could alleviate the current disincentive for local authorities to recognise that a child is in need and at the same time raise the level of priority within the Home Office for efficient case resolution, creating savings for the public purse. Agreement between local and central government on criteria for funding should lead to less litigation, a further cost saving, and a more consistent approach across local authorities.

Delays in case resolution could be addressed through extended membership by local authorities of NRPF Connect which provides a means to strengthen working relations between the responsible staff in local authorities and the Home Office respectively. Those local authorities that are not members need to be convinced that the financial cost of membership would indeed be quickly repaid by the prompt resolution of their supported NRPF cases; while those that are not members should not find that their cases are, in turn, de-prioritised.

Ways in which local authorities could in turn contribute to the voluntary return of families whose application to stay is rejected could also be considered, including raising awareness of the availability of assistance with return and the eligibility criteria that apply.

Statutory agencies and the voluntary sector, play a vital role in recognising safeguarding risks. **Local Safeguarding Children Boards (LSCBs)**, which bring statutory and non-statutory agencies together in each area to foster cooperation and effective joint-working, **should consider the particular situation and unmet needs of destitute children in NRPF families in their area and ways to enhance the effectiveness of joint working**. NHS services, police, children's centres and other statutory and voluntary services need to be informed of the potential availability of s17 support.

A series of measures could improve the consistency in local authorities' screening and assessment processes. The statutory guidance on assessment of children in need should be revised to make specific reference to the particular considerations in the cases of destitute NRPF children and families seeking s17 support, clarifying for staff what they need to know (including in relation to destitution

and human rights) without seeking to limit their professional judgement on how the guidance is implemented (Munro, 2014); coupled with training of social workers and case workers on the law and procedures. This would have benefits for staff and families, and for confidence in central government that any funding on these cases is appropriate. The statutory guidance should cover minimum acceptable rates for subsistence, or set a rate linked to an existing benefit level (so that it changes over time), taking into account the cost of meeting a child's basic needs and the provision of appropriate accommodation to meet the long-term needs of children and families. **Authorities could consider the efficiency of demarcating a dedicated NRPF team or social worker as a focal point of expertise and for referral from other agencies.**

The lack of capacity in the voluntary sector to provide advice and support could be addressed through referrals across and joint working between organisations that are providers of advice in the children, welfare and refugee/migrant sectors. Funding bodies could consider whether the terms of their funding unintentionally exclude this group, restricting its use to limited categories such as those in the refugee protection system. Finally, the availability of training across the voluntary sector in the complex intersection of immigration and children's law that governs these cases, and provision of information to the sector on changes in law and guidance, could be addressed.

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Appendix 1

List of Public funds (Mar 2015):

- income-based jobseeker's allowance
- income support
- child tax credit
- universal credit
- working tax credit
- a social fund payment
- child benefit
- housing benefit
- council tax benefit
- council tax reduction
- domestic rate relief (Northern Ireland)
- state pension credit
- attendance allowance
- severe disablement allowance
- personal independence payment
- carer's allowance
- disability living allowance
- an allocation of local authority housing
- local authority homelessness assistance

Appendix 2

Current weekly rates under Income Support and Home Office s4/s95 Immigration and Asylum Act 1999 support

Household type	Income Support	Section 95 asylum support	Section 4 asylum support*
Single Adult (18-25)	£57.35	£36.62	£35.39
Single Adult (25 and over)	£72.40	£36.62	£35.39
Lone parent (18+)	£72.40	£43.94	£35.39
Couple (both 18+)	£113.70	£72.52	£70.78
Child (16-18)	£66.33	£39.80	£35.39
Child (under 16)	£66.33	£52.96	£35.39
Additional payments	n/a	n/a	n/a
Pregnant mother	n/a	£3	n/a
Child under 1	n/a	£5	n/a
Child aged 1-3	n/a	£3	n/a
Maternity payment	n/a	£300 (one off payment)	n/a

* Provided in the form of a pre-payment card that can be used in specified shops to buy food, clothing and toiletries but not alcohol, tobacco, vehicle fuel or store/gift cards.

NB: those receiving s4 and s95 support do not pay for utilities, whereas people receiving Income Support would normally be expected to.

