

Nowhere to turn

How immigration rules are preventing people from getting support during the coronavirus pandemic



Summary

In the last year, Citizens Advice has supported nearly 49,000 people with immigration issues, while the immigration advice pages on our website were visited more than 1.9 million times.

The coronavirus pandemic has had an especially severe effect on migrants in the UK. Tens of thousands of migrants - as well as their British family members - face destitution, difficult choices about returning to work, huge future costs relating to their immigration status, and the prospect of loved ones being forced to leave the UK.

Different groups of migrants have been impacted in different ways. Some migrants are less likely to have experienced problems due to their immigration status during the pandemic, including European Economic Area (EEA) migrants with settled status and non-EEA migrants with indefinite leave to remain (ILR).

Insight from providing advice highlights a number of areas where migrants are facing particular challenges due to coronavirus:

- Not being eligible for benefits due to having No Recourse to Public Funds (NRPF). This affects non-EEA migrants without ILR, their family members, and British citizens with partners who have NRPF.¹ We have seen a 110% increase in the number of people needing advice on issues related to NRPF during the coronavirus pandemic. New research, carried out by the Oxford Migration Observatory for this report, suggests that up to 1.376 million people in the UK have NRPF.²
- Proving 'right to reside' and passing the Habitual Residence Test (HRT) to be eligible for benefits, affecting EEA migrants and their family members.
- Not being able to meet the minimum income requirement of at least £18,600, or the maintenance and accommodation requirement, in order to extend leave to remain in the UK. This affects British citizens and settled residents with partners and families living in the UK on spousal and family visas.
- Being moved from a 5-year to a 10-year path to settlement due to falling below the minimum income requirements. This results in an increase in fees associated with remaining in the UK, as well as re-setting the qualification time for settlement. This affects non-EEA migrants trying to obtain ILR and their family members.

¹ In those situations, people are only able to claim half the benefits of a family with no members subject to NRPF. The income and capital of the partner with NRPF is taken into account but the amount received is halved.

² The Migration Observatory at the University of Oxford COMPAS (June 2020) [People with valid leave to remain other than ILR or citizenship at the end of 2019 \(for those issued visas from 2004 onwards\) and with their asylum application pending](#). Analysis of Home Office data undertaken by the Migration Observatory. It is not possible to tell from the data whether individuals are currently in the UK, or whether they are facing hardship. People with pending asylum applications are not included in this estimate.

Our data on immigration and benefits also mirrors national data demonstrating the disproportionate impact the pandemic has had on people of colour.³ In the 12 months to 1 May 2020, 82% of Citizens Advice clients who came to us for advice about NRPF and non-EU migrants' access to benefits - where we have seen a 110% rise in enquiries - were people of colour. 32% of clients were Asian, 31% were black and 19% were from another ethnic minority background.

Briana's story below shows the impossible situation many migrants are being placed in, and the importance of rapidly lifting income and benefits conditions tied to visas. This is essential to ensure the easing of lockdown doesn't worsen the already outsize impact of the coronavirus crisis on migrants and people of colour.

Briana's story

Briana is a Jamaican national with No Recourse to Public Funds. She hasn't been able to work because she was told to shield by the NHS due to her heart and respiratory problems. She is usually employed in a care home. She's getting Statutory Sick Pay but this isn't enough to pay her rent and bills while she's barred from receiving benefits. Briana feels forced into going back to work - potentially putting her life in danger - because she is so worried about rent arrears and eviction.

Migrants and people of colour constitute a disproportionately high number of key frontline workers. For example, non-EU born workers make up 10% of the British labour force but represent 23% of health professionals, and 19% of nurses and midwives.⁴ EU-born workers comprise 7% of the overall labour force but 22% of the key workforce in the manufacturing sector.⁵ People of colour are overrepresented in frontline jobs including public transport drivers and cleaners,⁶ and are also 14% less likely to have been furloughed than white employees.⁷

Benefits restrictions and minimum income requirements have therefore both forced many migrants, and their family members, to continue working when it has been unsafe for them to do so. As lockdown restrictions ease, many more will face the same dilemma.

³ BBC News (May 2020) [Coronavirus: Black Britons face 'twice the risk' of death, says ONS](#); The Lancet (May 2020) [Evidence mounts on the disproportionate effect of COVID-19 on ethnic minorities](#); UK Collaborative Centre for Housing Evidence (May 2020) [The Unequal Impact of Covid-19 on Black, Asian, Minority Ethnic and Refugee Communities](#)

⁴ Oxford Migration Observatory (May 2020) [Locking out the keys? Migrant key workers and post-Brexit immigration policies](#)

⁵ Oxford Migration Observatory (May 2020) [Locking out the keys? Migrant key workers and post-Brexit immigration policies](#)

⁶ The King's Fund (April 2020) [Ethnic minority deaths and Covid-19: what are we to do?](#)

⁷ Benzeval et al (May 2020) [The Idiosyncratic Impact of an Aggregate Shock: The Distributional Consequences of COVID-19](#)

Recommendations

As the UK reduces certain lockdown restrictions, it is vital that migrants and their family members aren't forced back into work when it is unsafe for them to do so. This is likely to happen if they are unable to access benefits or fear the consequences of falling below minimum income requirements attached to visas. Four changes the government can rapidly make would help:

1. The No Recourse to Public Funds (NRPF) restriction for those subject to immigration control should be temporarily suspended.
2. The Habitual Residence Test (HRT) should be temporarily suspended from the application process for benefits.
3. The minimum income requirement (of at least £18,600 per year) and the maintenance and accommodation requirements should be temporarily suspended for all those renewing family visas.
4. All those on a 5-year route to settlement whose income has been affected by the coronavirus pandemic should not be moved onto a 10-year route because they cannot show minimum income.

1. No Recourse to Public Funds

Section 115 of the Immigration and Asylum Act 1999 states that a person will have 'no recourse to public funds' if they are 'subject to immigration control'. This means that they are not entitled to most welfare benefits, including Universal Credit, child benefit, housing benefit, and a range of allowances and tax credits.

Most migrants who are non-EEA nationals and have been in the UK for less than 5 years will have NRPF conditions attached to their visas. Research carried out by the Oxford Migration Observatory for this report has found that up to 1.376 million people hold valid visas that do not allow them to access public funds in the UK.⁸⁹

The coronavirus pandemic has had a major effect on the number of people coming to Citizens Advice for support because they have NRPF. Year-on-year, the number of issues we've seen relating to non-EU migrants' access to benefits rose by 110%.¹⁰ Views of the Citizens Advice webpage 'Accessing UK benefits if you're subject to immigration control' rose by 104% in the 8 weeks after lockdown was announced, compared with 8 weeks before lockdown was announced. More than 10,000 people viewed this webpage between 23/03/2020 and 18/05/2020.¹¹

Figure 1: Visits to the Citizens Advice webpage 'Accessing UK benefits if you're subject to immigration control'



⁸ The Migration Observatory at the University of Oxford COMPAS (June 2020) [People with valid leave to remain other than ILR or citizenship at the end of 2019 \(for those issued visas from 2004 onwards\) and with their asylum application pending](#). Analysis of Home Office data undertaken by the Migration Observatory. It is not possible to tell from the data whether individuals are currently in the UK, or whether they are facing hardship.

⁹ The report [A Lifeline for All](#) (May 2020) by The Children's Society concluded that over 1 million people in the UK have NRPF, based on analysis of 2016 Home Office data.

¹⁰ 1 March to 31 May 2019 vs. 1 March to 31 May 2020. In the first period, there were 731 issues relating to NRPF. In the second period, there were 1,538 issues relating to NRPF.

¹¹ 23/03/20 to 18/05/20 compared with 13/01/20 to 09/03/20

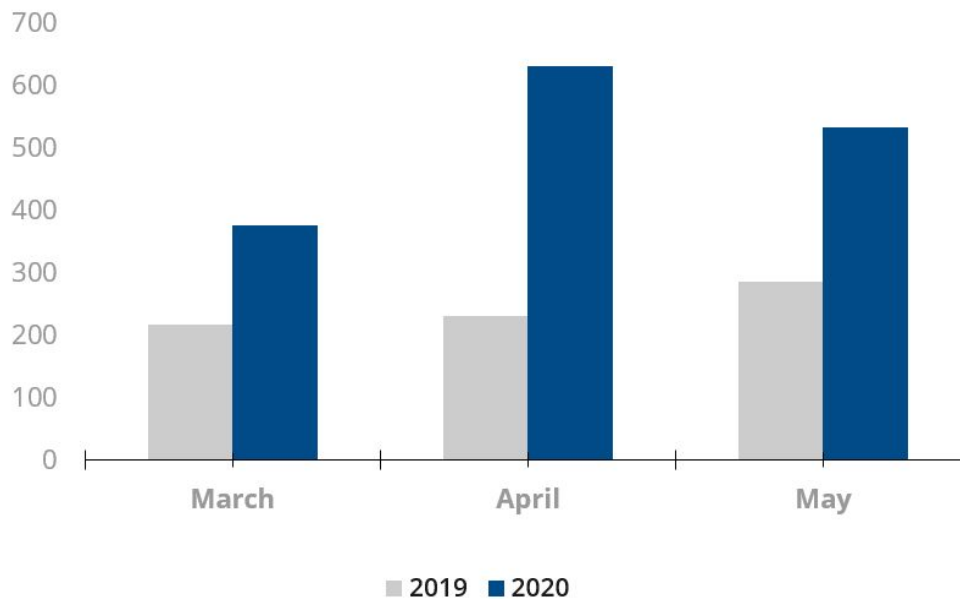
What do our evidence forms show?

Our advisers often submit evidence forms to highlight key problems faced by people they're supporting. An analysis of 75 evidence forms relating to NRPF during the coronavirus pandemic found that:

- Clients instructed to shield by the NHS - or living with someone instructed to shield - face having to go back to work because neither SSP nor furlough support is enough to live on without benefits.¹²
- Clients are struggling with accessing SSP, the furlough scheme and the Self-Employment Income Support Scheme (SEISS) due to being in precarious employment and on zero-hours contracts prior to the pandemic, leaving them with no government support at all.
- Clients are going into significant levels of debt in order to avoid jeopardising their immigration status by attempting to claim benefits.
- Clients with partners who have NRPF are struggling to meet their families' needs due to being eligible for only half the benefits of families with nobody affected by NRPF. This is despite the fact that benefits applications take into account the income and capital of partners with NRPF.

Demand for advice about NRPF has risen significantly during the pandemic (March, April and May 2020), compared with the same period last year (March, April and May 2019).

Figure 2: Clients with NRPF issues¹³



¹² The government has announced that people who have been shielding will no longer need to do so from 1 August 2020. It will be important to ensure that people are not forced back into work they feel is unsafe.

¹³ This data does not include clients affected by NRPF who came to our [Help to Claim](#) service, as the launch of this service in April 2019 led to a significant increase in benefit advice clients, meaning we cannot make year-on-year comparisons.

Kadiatou's story

Kadiatou has NRPF and was working as a cleaner on a zero-hours contract before the start of the coronavirus pandemic. She is not receiving any payment from the cleaning agency employing her, and they have so far declined to answer her messages asking for clarity about furlough (she only started her job in early March). She has severe asthma and is therefore currently unable to seek new employment, as she needs to shield at home. She has fallen behind on her rent payments and is being chased by her landlord. Prior to the pandemic, she already had council tax and utilities arrears. Kadiatou has run out of money for food, and she is feeling very distressed and overwhelmed by her situation. She contacted Citizens Advice to ask to be referred to a food bank and mental health support.

Recommendation: The No Recourse to Public Funds (NRPF) restriction for those 'subject to immigration control' should be lifted for the duration of the coronavirus lockdown.

While the definition of NRPF and who it applies to is in primary legislation, 1. regulations that use this definition could be amended or 2. ex gratia (one off) payments - requiring no legal change - could be made.

If this condition is not lifted, many migrants will be forced to go to work when they may have coronavirus symptoms or when it is dangerous for them to do so, for example when they are falling into arrears or destitution and their employer re-opens their place of work.

2. Right to reside and the HRT for EEA migrants

EEA nationals living in the UK have to prove that they are eligible to receive benefits. If an EEA national has been living in the UK for 5 years or more, they can apply for settled status. This automatically means they have a right to reside and should be able to access benefits. However, our evidence forms show that clients with settled status are still regularly being rejected for benefits in error by the DWP.

EEA nationals who have been living in the UK for less than 5 years cannot claim benefits if they are deemed to be without a right to reside, as well as those with a right to reside but falling into the following categories:

- People whose only right to reside is as a jobseeker. EEA jobseekers are unable to claim housing benefit.
- EEA nationals and their family members exercising the three-month initial right to reside.
- EEA nationals and family members who have right to reside as students or self-sufficient persons and become homeless, in breach of the former conditions.

EEA migrants who were not employed at the start of the pandemic will particularly struggle to prove their right to reside and access benefits. Around 87,000 EU citizens were unemployed in Q4 2019 and around 86,000 EU citizens were unemployed in Q1 2020.¹⁴

Alicja's story

Alicja and Jan are from Poland and have been refused UC because they failed the HRT. Their Housing Benefit has now also been stopped as a result. Jan is usually self-employed but his income has dried up due to the pandemic. They have been living in the UK for nearly 10 years but are struggling with the evidence requirements for applying for settled status, proving their right to reside and passing the HRT during the pandemic. Both their passports have expired, and they do not have recent enough invoices, bank statements and other evidence to submit. They are having trouble accessing consular assistance to renew their passports because of travel restrictions and reduced work by consular staff due to the coronavirus.

Alicja and Jan can't pay their rent, their debts are piling up, and they are being harassed on the phone by bailiffs. They feel like they are stuck in an impossible situation and this is causing huge mental stress. Alicja contacted Citizens Advice to ask for a food bank referral, debt advice and support with providing evidence of their right to reside.

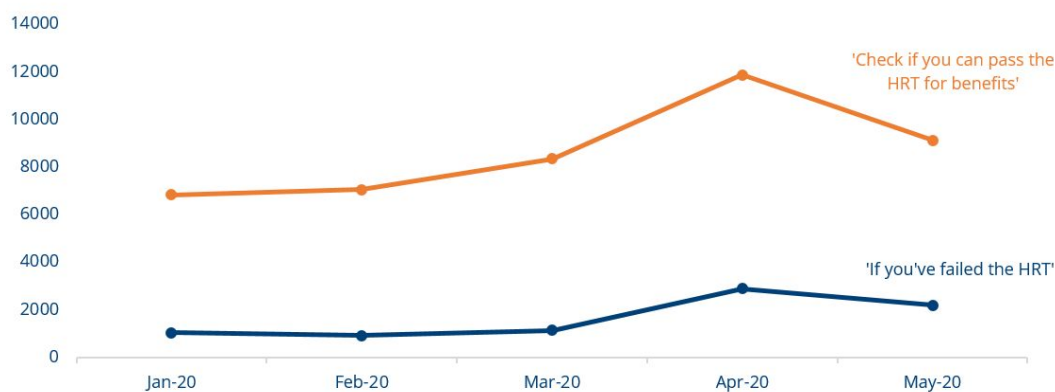
¹⁴ ONS (2020) [Unemployment level by nationality \(16+\) - Total EU \(EU27\): Thousands](#)

What do our evidence forms show?

An analysis of 75 evidence forms relating to the right to reside for EEA migrants and the HRT during the coronavirus pandemic found evidence that:

- Clients are failing the HRT despite meeting all the criteria and - in some cases - having settled status.
- Clients are struggling to meet the stringent evidence requirements to pass the HRT, and the pandemic makes gathering and digitally submitting this evidence even harder than usual.
- Clients in precarious employment and on zero-hours contracts have been refused furlough by employers and made redundant, but at the same time are ineligible for benefits because they no longer meet the criteria for right to reside.
- Some clients who were refused benefits were unable to leave the UK even when they wanted to return to their home country due to coronavirus travel restrictions.

Figure 3: Visits to Citizens Advice webpages about the Habitual Residence Test



Recommendation: The Habitual Residence Test should be temporarily suspended from the application process for benefits such as Universal Credit.

This would make it easier for EEA nationals, who often experience difficulty accessing benefits, to claim. It would also simplify the process for all claimants, including UK citizens, by reducing the amount of evidence needed to make a claim.

Lifting this requirement temporarily in the benefits regulations would not have implications on applicants' right to reside under EU law. In these exceptional circumstances it could not be viewed as an unreasonable reliance on social assistance in the host member state.

3. Minimum income requirements for migrants and people sponsoring their partner's visa

Since 2012, UK citizens and settled residents applying to bring a non-EEA partner to the country must meet a minimum income requirement of £18,600 per year before tax. This threshold is higher for people who are also sponsoring children.¹⁵ Usually the income of the non-EEA partner is not taken into account, and therefore the UK citizen or settled resident must meet the income requirement alone. Prior to the pandemic, 40% of people in the UK did not meet this earnings threshold.¹⁶ Research by Citizens Advice has found that nearly 4 in 10 (38%) households have reported lost income because of this crisis.¹⁷

New guidance, published on 9 June 2020, states that the Home Office will consider employment income for the 6 month period immediately before any income reduction due to coronavirus, as long as the requirement was met for at least 6 months up to March 2020.¹⁸ If there has been a salary reduction because of furlough, income will be treated as though it is 100% of salary. For those who are self-employed, a loss of annual income due to coronavirus between 1 March 2020 and 31 July 2020 will generally be disregarded, along with the impact on employment income from the same period for future applications. However, visa renewal may not be possible for partners of people who are made redundant, or self-employed people whose income continues to be affected beyond 31 July.

A review of our evidence forms shows that:

- Clients sponsoring the visa of a non-EEA partner are too scared to try to claim benefits because it may affect the future visa renewal, with some taking out credit cards and going into debt instead.
- Clients are weighing up continuing to work - even when they are worried it is unsafe to do so, for example because they are pregnant - because they have been refused furlough but cannot afford to see their income drop and thereby cause problems with their partner's immigration status.

¹⁵ An additional £3,800 needs to be earned for any first child and another £2,400 for each child after the first child.

¹⁶ The Guardian (May 2020) [Many key workers fear pay falling below Home Office income requirement](#)

¹⁷ Citizens Advice (May 2020) [Lockdown Lifeline: Ensuring adequate support across the benefits system during the Covid-19 pandemic](#)

¹⁸ Home Office (June 2020) [Coronavirus \(COVID-19\): advice for UK visa applicants and temporary UK residents](#)

Joe's story

Joe is a self-employed plumber and his wife, Amma, lives with him in the UK on a spousal visa. Amma was abroad when the coronavirus pandemic began. To be able to sponsor Amma's visa when she applies to renew it, Joe has to show he has a minimum income of £18,600 a year. Due to the coronavirus pandemic, he has seen a dramatic decrease in his earnings. He contacted Citizens Advice because he is afraid that they won't be able to renew Amma's visa and be reunited in the UK.

Recommendation: Suspend the minimum income requirement (of at least £18,600 per year) and the maintenance and accommodation requirements for all those renewing family visas (partners, parents of settled children, children of partners with limited leave).

4. Being moved from a 5-year route to settlement to a 10-year route to settlement

Appendix FM of the Immigration Rules provides two routes to settlement on the basis of family life as a partner or parent. There is a 5-year route and a 10-year route. Under the 5-year route, the applicant must meet the financial requirement in the form of a minimum income requirement. The minimum income threshold is £18,600. People on the 5-year route are moved over to the 10-year route if they fall below the minimum income requirement when they are renewing their leave to remain.¹⁹

Neha's story

Neha is in the UK on a spousal visa with the minimum income requirement of £18,600. She was meant to be renewing her visa in June 2020. She and her husband, Akash, have both lost their jobs due to the coronavirus. She contacted Citizens Advice because she therefore faces being switched from the 5-year route to the 10-year route to settlement, incurring major additional costs. These costs are especially daunting because they both now have no income. The additional costs are expected to come to at least £5,000 (including the immigration health surcharge, application fees and legal advice), as well as at least 5 more years of uncertainty during which time these costs may increase. Neha and Akash fear they will become destitute.

Recommendation: Any partners who are on a 5-year route to settlement and whose income has been affected by the coronavirus pandemic should not be moved onto a 10-year route because they cannot show minimum income.

Partners currently on the 5-year route who can no longer meet the minimum income requirement because of the coronavirus may be given leave on the 10-year route. This would cause long-term detriment, as those affected would have to wait at least another 5 years before applying for settlement and gaining the security that settlement brings. If someone on the 5-year route is moved to the 10-year route and then subsequently switches back to the 5-year route, they must begin again from zero years on the 5-year route. They would not have access to public funds for a further 5 years.

They would also have to pay for two further - very costly - applications for leave, more legal advice and spend more time paying the immigration health surcharge. Neha's story above shows how much money this amounts to: she expects she will have to pay at least £5,000 more at a time when she has no income, and finding a job will continue to be difficult as the UK faces a major recession.²⁰

¹⁹ This happens when someone applies to renew their leave to remain, which takes place every 2.5 years. Applicants must be able to show minimum income for the 6 months prior to the application. Therefore if someone's income falls and they have a renewal coming up, they risk being moved from the 5-year to the 10-year route.

²⁰ Financial Times (May 2020) [BoE warns UK set to enter worst recession for 300 years](#)

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