

# Grants Committee

Addressing issues related to No Recourse to Public Funds to support work to combat homelessness and tackle domestic violence

Item: 8

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## Summary

The Priority 3 strand of the 2017-21 Grants Programme, which completed delivery at the end of June 2019, will under-deliver against the original targets set. The programme is projected to create an underspend of £1,019,000, which will be returned to the Grants Programme.

At the July 2019 AGM, Grants Committee members requested information about the supply and demand for immigration advice following a discussion about options for redeploying the Priority 3 underspend to reduce the impact of No Recourse to Public Funds on individuals and boroughs.

This paper sets out known information about supply and demand for immigration advice in London and the impact on boroughs of No Recourse to Public Funds and sets out a proposal to deploy the Priority 3 underspend with existing Priority 1 and 2 grant holders.

Saira Grant (solicitor and research consultant, and formally the Chief Executive of the Joint Council for the Welfare of Immigrants) has been working with the Paul Hamlyn Foundation to better understand the demand for immigration advice services; her work, which will be published in January 2020, has informed this report. Ms Grant will be presenting the findings from her research to Grants Committee, along with information about the pressures that London faces regarding immigration advice.

## Recommendations

Grants Committee is recommended to:

- agree that £1,019,000 Priority 3 underspend is used to increase Priority 1 and 2 grants for the sole purpose of increasing immigration advice for service users with No Recourse to Public Funds.
- agree that the terms of the funding agreements with current Priority 1 and Priority 2 partners are re-negotiated to include the provision

of immigration advice services, through appropriately qualified organisations, for users with No Recourse to Public Funds; these terms to be negotiated and agreed with the Director responsible for the Grants Programme

- agree that the grant values agreed with current Priority 1 and Priority 2 partners are increased, where appropriate, and in line with renegotiated terms to enable the provision of immigration advice services to users with No Recourse to Public Funds; these grant values to be negotiated and agreed with the Director responsible for the Grants Programme.
- to provide some oversight and scrutiny, agree that negotiated terms are discussed with the Chair and Vice Chairs of the Grants Committee prior to sign-off.

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## **1 Background**

- 1.1 The Priority 3 strand of the 2017-2021 London Councils Grants Programme – *Tackling poverty through employment* – completed delivery at the end of June 2019.
- 1.2 The programme is funded by the Grants Committee and is match-funded by European Social Funds (ESF). The programme will under-deliver against the original targets set. Based on the final delivery information, it is projected that £1,019,000 will be returned to the Grants Programme.
- 1.3 Grants Committee Executive first discussed options for redeploying the Priority 3 related underspend in February 2019 and took options to full Grants Committee in March 2019. Additional support for those with NRPF, particularly considering the growing numbers of those with NRPF being supported under Priority 1 and 2, was taken forward for further investigation. Following more detailed discussion in July 2019, Grants Committee members requested information about the supply and demand for immigration advice to inform their decision to redeploy funds. Following discussion of a detailed report in September 2019, Grants Committee Executive members provided a steer for recommendations to Grants Committee.

## **2 The impact of NRPF**

- 2.1 The cost to local authorities in London of providing statutory support to people with NRPF is in excess of £50 million a year.
- 2.2 Through the Grants Programme, delivery partners are currently supporting 450 to 500 vulnerable people with NRPF every quarter, and the number is increasing. Many of the people our delivery partners support face challenging personal circumstances, which are compounded by their NRPF status. One delivery partner working to tackle sexual and domestic violence took on a solicitor, full-time, to deal with the increasing volume of complex cases.
- 2.3 The issues of NRPF, homelessness and domestic violence are interrelated. Shelter has estimated that up to 20 per cent of Grants Programme beneficiaries have NRPF or complex problems with immigration status. Over 600 women a year with NRPF are affected by domestic violence, including women who have been trafficked into the UK for sexual exploitation. There are also links to other forms of modern slavery and exploitation, where insecure immigration status and NRPF can act as a barrier to accessing help and support, placing potential victims at further risk of exploitation.

- 2.4 A recent report<sup>1</sup> shows the disproportionate effects of NRPF policy on women, low-income families, disabled people, pregnant (and maternity stage) women, and black and minority ethnic British children - groups that are targeted for support through the Grants Programme.
- 2.5 The report establishes that those with protected characteristics are worse affected by the NRPF condition than those without. It draws out the extent to which people are impacted by the NRPF condition and highlights the experience of individuals in destitution, with a particular reference to inadequacy of accommodation and the risk of falling into dangerous and exploitative living conditions, including street homelessness.
- 2.6 Considering that all the respondents had children, this raises safeguarding concerns. The Association of Directors of Children's Services' 2018 research report into safeguarding pressures identifies the growing group of families who have NRPF as one of the top pressures on children's services budgets. The cost of both providing Section 17 (Children Act 1989) support and the time required by social workers to undertake assessments is not included as part of the local authority funding formula.

### **3 Key issues related to NRPF**

- 3.1 To establish the key issues and explore possible interventions and actions to relieve the impact of NRPF on individuals and boroughs, expert advice was sought from a variety of stakeholders. Discussions have taken place (and/or are on-going) with:
- 3.1.1 borough officers
  - 3.1.2 the NRPF Network - 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
  - 3.1.3 the London Modern Slavery Leads group - a network of borough and CCG officers
  - 3.1.4 the Law Centres Network - which supports a national network of Law Centres that work with some of the most vulnerable and disadvantaged people in society
  - 3.1.5 London Funders - a membership network for funders and investors in London's civil society
  - 3.1.6 the Home Office - the Modern Slavery Unit

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<sup>1</sup> Woolley, A, 2019. *Access Denied: the impact of no recourse to public funds policy*. London: The Unity Project

- 3.1.7 Trust for London - an independent charitable foundation tackling poverty and inequality in London
- 3.1.8 the Greater London Authority - the Senior Policy Office for Migration and Refugees
- 3.1.9 the Migration Exchange Funder Network - an informal network of independent funders, which aims to improve the lives of migrants and receiving communities in the UK.
- 3.1.10 the Paul Hamlyn Foundation - an independent grant-making foundation in the UK that aims to help people overcome disadvantage and lack of opportunity
- 3.1.11 London Councils Principal Policy and Project Officers - policy leads for Violence Against Women and Girls, Female Offending, Modern Slavery, Migration, Social Integrating, Equalities and Civil Society
- 3.1.12 The Advice Services Network - the umbrella body for independent advice services in the UK, supporting national networks of not-for-profit organisations providing advice and help on the law, access to services and related issues
- 3.1.13 Refugee Action - provides support and resources for organisations working with refugees, asylum-seekers and migrants across the UK.

#### **4 Immigration advice and lack of capacity**

- 4.1 The stand-out issue that all stakeholders raised was lack of capacity to meet demand for immigration advice.
- 4.2 Several stakeholders noted that lack of funding for individuals to access immigration and legal advice was an issue. The removal of legal aid for immigration cases means that migrants who are unable to make their immigration applications alone have no option but to either turn to private solicitors, that may charge unaffordable fees, or attempt to complete complex immigration applications themselves.
- 4.3 Stakeholders also noted that there has been a significant increase in individuals presenting with NRPF and complex circumstances – both in immigration terms and personal circumstances, invariably destitution.
- 4.4 Grants Programme delivery partners, through discussions for the mid-programme review, also highlighted the increasing number of people presenting with complex and enduring issues.

- 4.5 The lack of capacity to meet demand for immigration advice has the two-fold impact of placing individuals at increased risk of becoming destitute, which in turn puts greater pressure on local authority resources.
- 4.6 Organisations delivering support services to immigrants were surveyed for the *Access Denied: the impact of no recourse to public funds policy*<sup>2</sup> report. Responses to the surveys illustrated that "...lack of organisational capacity poses an, at times unassailable, primary barrier to accessing help".

## **5 Immigration advice – supply and demand**

- 5.1 The Paul Hamlyn Foundation has commissioned a report that examines the level of unmet need for immigration legal advice and representation and to look at impending immigration status issues for European Union (EU)<sup>3</sup> citizens, across England and Wales. The report assesses if the evidence shows a need to increase free immigration legal provision to support vulnerable migrants (the report focuses solely on immigration law and not asylum law).
- 5.2 The report looks at the difference between the two main types of immigration advisers; solicitors and Office of the Immigration Services Commissioner (OISC) registered advisers and looks at the areas of immigration law they can practice in, as understanding who can provide legal immigration advice and to what extent is a significant factor when thinking about immigration capacity. The report also provides a brief overview of the current immigration landscape to contextualise the difficulties migrants without regularised immigration status face.
- 5.3 The report also looks at Legal Aid provision for immigration advice in England and Wales and the effect this has had on the number of providers and on access to justice (where data is available for London, this is highlighted in the paper). Legal Aid provision for immigration advice is an important part of the supply and demand picture, so is included in this paper to ensure that all the pressures on the immigration advice system are included. It is not intended that redeployed funds are used to make up for budget reductions/eligibility changes with Legal Aid.
- 5.4 The report also looks at the EU Settlement Scheme for EU migrants, which originates from the Brexit Withdrawal Agreement and assesses the types and numbers of individuals who are unlikely to qualify under the Scheme and therefore have the potential

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<sup>2</sup> Woolley, A, 2019. *Access Denied: the impact of no recourse to public funds policy*. London: The Unity Project

<sup>3</sup> European Economic Area (EEA) and Swiss nationals will also qualify for the scheme

to become undocumented (the number and types of existing undocumented migrants estimated to be in the UK is also considered).

5.5 The report includes information and data for the UK and covers:

- immigration advice and regulation
- brief overview of immigration policy and rules
- Legal aid, sentencing and punishment of offenders Act 2012 (LASPO) and immigration legal aid: the effect of LASPO and access to justice
- migrant population mapping and the groups needing legal assistance
- the lack of immigration status and the wider costs to society
- increasing immigration provision

5.6 This paper focusses on information on supply and demand (LASPO 2012 and immigration legal aid: the effect of LASPO and access to justice, and Migrant population mapping and the groups needing legal assistance).

5.7 The report author, Saira Grant, will be attending Grants Committee to present her findings.

## **6 LASPO 2012 and immigration legal aid: the effect of LASPO and access to justice**

6.1 The report shows that the changes brought about following the commencement of LASPO 2012 have impacted on the supply and availability of free legal help, especially for access to advice delivered through legal practices and the not-for-profit sector.

6.2 The amount of legal aid provided for both advice and representation has reduced significantly since LASPO came into effect; the number of cases where legal aid was provided for initial advice has fallen by more than 75 per cent compared with pre-LASPO levels, and the number of grants of legal aid for representation<sup>4</sup> has fallen by 30 per cent.

6.3 Specifically, in immigration over the last five years, new cases (referred to as 'matter starts') fell by 70 per cent. This sharp decline has stabilised, but new matter starts in immigration stood nine per cent lower in January to March 2018 than in the same quarter of the previous year.<sup>5</sup>

6.4 Over the last five years since LASPO came into force the number of civil legal aid providers has also nearly halved, falling from 4,253 providers in 2011-12 to 2,824 in 2017-18, including law firms and not-for-profit organisations.

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<sup>4</sup> Cases in front of the immigration and asylum tribunals

<sup>5</sup> Ministry of Justice Immigration Statistics Jan-March 2018

- 6.5 The Children's Society found that in the two years after LASPO came into force there was at least a 30 per cent cut in regulated immigration advice services across the country and a decrease of almost 50 per cent in regulated non-fee charging services to deal with appeals and representation in court.<sup>6</sup>
- 6.6 The overall number of providers that have completed immigration (non-asylum) work has decreased from the pre-LASPO levels of 249 to 160 in 2018; this is a 64 per cent fall (see Table 1).

**Table 1: Legal aid providers**

Number of provider offices completing work in Legal Help and Controlled Legal Representation

	Immigration – Asylum	Immigration - Nationality & Visit	Total
2011-12	256	249	257
2012-13	234	235	240
2013-14	348	276	360
2014-15	310	257	319
2015-16	274	204	276
2016-17	234	170	237
2017-2018	225	160	228

Data includes solicitors and not-for-profit organisations (excludes community legal advice centres)<sup>7</sup>. The numbers do not add up as providers can be the same in both categories.

- 6.7 The reduced number of legal aid providers has meant those still providing legal aid are at capacity. For example, recent figures show that less than half of people in detention have a legal representative and just over half have a legal aid solicitor.<sup>8</sup>
- 6.8 The Law Centres Network informed the House of Commons Justice Committee in 2014-15 that nine law centres had shut down, which was one in six of the network's members.
- 6.9 Centres reported a surge in enquiries in areas out of scope for legal aid, primarily family, immigration and employment law. For example, Hackney Community Law Centre reported that in winter 2013 it saw a 200 per cent increase in people looking for immigration help.

<sup>6</sup> This was through a series of Freedom of Information requests which formed part of their research. H Connolly (2015). *Cut Off from Justice: The impact of excluding separated migrant children from Legal Aid*. [https://www.childrenssociety.org.uk/sites/default/files/LegalAid\\_Summary\\_0.p](https://www.childrenssociety.org.uk/sites/default/files/LegalAid_Summary_0.p)

<sup>7</sup> MOJ, Legal Aid Statistics Tables Jun - Sep 2018 Table 9.3 <https://www.gov.uk/government/statistics/legal-aid-statistics-july-to-september-2018>

<sup>8</sup> Article in Law Society Gazette May 2018

- 6.10 The National Audit Office's (NAO) consultation with providers indicated that third sector providers were not be able to meet the extra demand generated by the reforms. Among legal firms/advocate respondents, 49 per cent said they were referring more clients to third sector organisations since April 2013 and 70 per cent of third-sector respondents said they could meet half or less of the demand from clients who were not eligible for civil legal aid.<sup>9</sup>
- 6.11 The NAO report further concluded that their finding was consistent with other research. They cross referenced Citizens Advice reports that said there had been a 62 per cent increase in people seeking advice online about help with legal costs since the reforms, while 92 per cent of Citizens Advice bureaux were finding it difficult to refer people to specialist legal advisers since the reforms were introduced.
- 6.12 The Solicitors Pro Bono Group reported a year on year increase in their pro bono clinics. Between April 2014 and March 2015, there were 43,000 individual enquiries at clinics which was a 55 per cent increase on the previous year. Between April 2015 and March 2016, there were 53,000 individual enquiries, a 24 per cent increase, and between April 2016 and March 2017 58,000 individual enquires a 10 per cent increase on the previous year.<sup>10</sup>
- 6.13 In 2017, the Bar Pro Bono Unit noted that it had received 2,274 applications for help, over a 1,000 more than the number of applications received yearly pre-LASPO. They further noted that the requests for assistance had increased by almost 65 per cent since April 2013 with the highest rises in immigration and family law.<sup>11</sup>
- 6.14 To asses unmet legal needs and the rising demand for legal support, the law firm Hogan Lovells, a leader in pro bono work, recently undertook a 'deep dive' study of London MPs surgeries casework and found that 89 per cent of sessions observed involved problems of a legal nature. The data from the research showed that the three most common areas in which constituents had legal problems were housing (37 per cent), immigration (23 per cent) and welfare benefits (13 per cent)<sup>12</sup>

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<sup>9</sup> National Audit Office, Ministry of Justice and Legal Aid Agency, Implementing Reforms to Civil Legal Aid HC 784 SESSION 2014-15 20 NOVEMBER 2014 para 2.13-15

<sup>10</sup> LawWorks is the operating name of the Solicitors Pro Bono Group. See Clinics reports 2016-18 <https://www.lawworks.org.uk/solicitors-and-volunteers/resources/lawworks-clinics-network-report-april-2016-march-2017>

<sup>11</sup> LawWorks Submission to the Post-Implementation Review of LASPO para 28 <https://www.lawworks.org.uk/sites/default/files/files/LASPO%20Review%20submission2%20%285%29%20%281%29%20%285.pdf>

<sup>12</sup> <https://www.lawworks.org.uk/sites/default/files/files/Mind-the-gap-an-assessment-of-unmet-legal-need-in-London.pdf>

- 6.15 The fees paid to practitioners for legal aid work have not been increased in line with inflation since 1998-99; this equates to a 34 per cent real-terms reduction. As part of LASPO, the Ministry of Justice reduced fees by 10 per cent without carrying out a sustainability assessment on the market of those reduced fee levels.
- 6.16 It is reported that low fees make it hard for specialist immigration lawyers to be properly remunerated, creating a financial disincentive for younger members joining the profession. A recent study by the Young Legal Aid Lawyers<sup>13</sup> interviewed 200 lawyers with less than 10 years post qualification experience and found that more than half earned less than £25,000 a year (the New Law Journal<sup>14</sup> summarised this by its headline, 'Legal Aid Lawyers are Undervalued, Underpaid & Under pressure').
- 6.17 Recruitment of specialist immigration lawyers is difficult. A small immigration specialist provider in London with expertise in highly complex cases has struggled to recruit a Legal Aid specialist despite a higher than average salary. They simply could not find lawyers with the right experience to meet their clients' complex immigration needs.<sup>15</sup>
- 6.18 Pre-LASPO legal aid firms managed financially through the volume of casework across a breadth of areas. Evidence shows there has been a significant drop post-LASPO - 64 per cent fewer legal aid providers and a 70 per cent fall in new immigration cases being opened.
- 6.19 The reduction in law firms, not-for-profits, charities and law centres providing legal immigration assistance has a two-fold impact: vulnerable clients are left without legal representation and specialist immigration advisers are lost.
- 6.20 Refugee Action recently mapped legal aid provision for asylum seekers. Their report Tipping the Scales: Access to Justice in the Asylum System<sup>16</sup> found that between 2005-2018:
- 56 per cent of immigration and asylum providers were lost
  - 64 per cent of not for profit providers were lost
- 6.21 The research highlights that organisations working with vulnerable people are facing barriers to finding government-funded legal assistance, with 76 per cent of respondents finding it 'very difficult' or 'quite difficult' to refer people to legal representatives and 87 per cent of respondents finding it harder to refer than six years ago (pre-LASPO). Respondents said even where legal provision exists referrals are hard due to a lack of

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<sup>13</sup> <http://www.younglegalaidlawyers.org>

<sup>14</sup> <https://www.newlawjournal.co.uk/content/dark-days-legal-aid>

<sup>15</sup> Information from two interviews carried out with solicitors for the unpublished PHF paper

<sup>16</sup> <https://www.refugee-action.org.uk/tipping-scales-access-justice-asylum-system/> Chart on page 11 of report

capacity within law firms and the difficulty of taking on time consuming, complex cases which cost more than the remuneration offered by the Legal Aid Agency. These findings are repeated by providers in non-asylum cases.

- 6.22 Legal Aid Agency data (all immigration legal aid providers in England and Wales October 2018) shows that post the issue of new legal aid contracts in September 2018 there are currently 314 organisations with immigration and asylum legal aid contracts.

**Table 2: Organisations with immigration and asylum legal aid contracts**

Legal Aid Agency: immigration legal aid providers in England and Wales October 2018

Region		
North East	<b>17</b>	5%
North West	<b>34</b>	11%
East Midlands	<b>7</b>	2%
West Midlands	<b>49</b>	16%
East of England	<b>0</b>	0%
London/Greater London	<b>134</b>	43%
Barking	1	
Croydon	7	
Edgware	2	
Brentford	1	
Bromley	1	
Harrow	7	
Hayes	2	
Hounslow	5	
Ilford	4	
London (unspecified)	90	
Morden	2	
Pinner	1	
Slough	1	
Southall	3	
Thornton Heath	2	
Wallington	1	
West Croydon	1	
Wembley	2	
Watford	1	
South East	<b>24</b>	8%
South West	<b>12</b>	4%
Wales	<b>15</b>	5%
<b>Total</b>	<b>314</b>	

- 6.23 From Table 1 (paragraph 6.6) Ministry of Justice data shows that only 160 providers have completed immigration work (non-asylum) in 2017-18. The Legal Aid Agency data shows the number of providers, whilst the statistics produced by the Ministry of Justice show the number of providers that are actually undertaking immigration work.

6.24 *Droughts and Deserts: A report on the immigration legal aid market* (Wilding, J., 2019) concludes that:<sup>17</sup>

- the overall market of providers fluctuates in size, composition and distribution over time but appears to be following a general trend towards fewer providers, with not-for-profits' market share declining markedly
- there is a mismatch between supply and demand, but this is difficult to quantify due to lack of effective data collection on demand
- there is a difference between notional supply, or the number of matter starts available in an area, and functional supply, or the actual capacity of providers to take on new clients.

6.25 A similar picture of lack of providers emerges when the number of people registered with the Office of Immigration Services Commissioner (OISC) to provide immigration advice nationwide is considered.

**Table 3: OISC Registered Non-Fee Charging Providers**

From FOI a Regional Breakdown of OISC Advisors FOI/AH/17/08 17 March 2016

Region	Level 1		Level 2		Level 3		Total	
O = Organisations I = Individuals	O	I	O	I	O	I	O	I
<b>All Regions</b>	487	543	67	125	69	90	623	758
<b>London</b>	68	195	21	43	33	44	122	282
<b>East Midlands</b>	28	12	2	4	1	2	31	18
<b>East of England</b>	45	24	6	5	1	3	52	32
<b>North East</b>	16	8	2	2	0	0	18	10
<b>North West</b>	42	27	3	16	4	9	49	52
<b>Northern Ireland</b>	20	5	0	0	2	0	22	5
<b>Scotland</b>	64	25	4	7	1	0	69	32
<b>South East</b>	73	115	6	12	5	5	84	132
<b>South West</b>	35	13	1	1	3	3	39	17
<b>Wales</b>	22	17	1	0	1	4	24	21
<b>West Midlands</b>	34	32	8	14	6	6	48	52
<b>Yorkshire</b>	26	49	7	14	10	14	43	77
<b>Other</b>	14	21	6	7	2	0	22	28

<sup>17</sup> Wilding, J., *Droughts and Deserts: A report on the immigration legal aid market*. Brighton, Jo Wilding

**Table 4: OISC Registered Fee Charging Providers**

From FOI a Regional Breakdown of OISC Advisors FOI/AH/17/08 17 March 2016

Region	Level 1		Level 2		Level 3		Total	
O = Organisations I = Individuals	O	I	O	I	O	I	O	I
<b>All Regions</b>	560	1684	100	222	429	485	1089	2,391
<b>London</b>	274	723	58	140	215	243	547	1,106
<b>East Midlands</b>	25	97	3	5	18	19	46	121
<b>East of England</b>	29	93	4	11	24	26	57	130
<b>North East</b>	6	25	1	2	10	9	17	36
<b>North West</b>	41	110	4	10	30	42	75	162
<b>Northern Ireland</b>	3	3	1	1	0	0	4	4
<b>Scotland</b>	18	69	1	3	10	8	29	80
<b>South East</b>	51	187	9	13	30	26	90	226
<b>South West</b>	13	62	2	5	6	11	21	78
<b>Wales</b>	9	38	1	1	5	7	15	46
<b>West Midlands</b>	26	82	5	18	31	30	62	130
<b>Yorkshire</b>	23	88	4	8	31	40	58	136
<b>Other</b>	42	107	7	5	19	24	68	136

6.26 In order to provide specialist legal advice an OISC registered individual needs to have at least a level 2 qualification, but this does not allow them to run appeals or take on certain types of complex cases. Only level 3 registered advisers can provide a full range of advice barring Judicial Reviews. To identify Judicial Reviews and instruct a barrister an OISC level 3 adviser will also need to complete Judicial Review Case Management accreditation.

6.27 Data from 2016 shows that there are 90 level 3 registered individuals in the UK in 69 non-fee charging organisations. Most providers across all levels are in London, with 44 individuals at level 3. The total number of fee charging individuals at level 3 is much higher nationally at 485, with 243 in London.

6.28 The Ministry of Justice's Post Implementation Review (PIR) on LASPO<sup>18</sup> acknowledges that whilst immigration provision has decreased this is deemed to be an intended consequence of the original scope changes brought about by LASPO.

## **7 Migrant population mapping and groups needing legal assistance**

7.1 Between January 2017 and December 2017 there were approximately 6.2 million people with non-British nationality living in the UK and 9.4 million people who were born abroad.

<sup>18</sup> Post-Implementation Review of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) Feb 2019

- 7.2 The UK's migrant population is concentrated in London; around 36 per cent of people living in the UK who were born abroad live in the capital city.
- 7.3 Whilst not all 6.2 million people with non-British nationality living in the UK will need immigration advice or legal assistance (e.g. people not intending to seek permanent settlement; those with indefinite leave to remain with no intention to seek British citizenship; straightforward entitlement and citizenship applications without the need for legal assistance) and assuming that over half of this number are EU citizens, a broad brush snapshot of the potential volume of people who may need advice is approximately 2 million, with about half potentially needing legal advice.
- 7.4 The 2 million figure is illustrative only to demonstrate potential scale and has not been obtained through statistical analysis - data is not available to make accurate predictions. Research would be needed to try and quantify and disaggregate this cohort.

### **EU migrant population**

- 7.5 EEA nationals - which includes all EU nationals - do not have the NRPF condition imposed. Whilst those with NRPF are the primary consideration for investment from the Grants Programme, information about the EU migrant population is included in this paper as EU migrants form part of the demand picture.
- 7.6 The estimated resident population for 2018 shows that there are approximately 3.8 million EU nationals in the UK<sup>19</sup> of which 1.221 million are in London (32 per cent).
- 7.7 Here for Good, an organisation set up to provide free advice for EU migrants trying to navigate the Settlement Scheme has mapped free legal provision for EU migrants regionally and has concluded that there is a major problem facing EU citizens looking for legal advice.
- 7.8 The Greater London Authority has also produced an EEA hub which provides information on free legal advice.<sup>20</sup> The list of immigration advice providers is limited to 16 London law firms and organisations. The list is also caveated with the following: *'Please note that many of these services are charities and civil society organisations that are doing what they can to fill the gaps in advice and information provision.'*
- 7.9 Whilst it is anticipated that the vast majority of EU migrants will be able to obtain settled status, vulnerable groups may struggle to navigate the system. Additionally, people who

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<sup>19</sup><https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/datasets/populationoftheunitedkingdombycountryofbirthandnationality>

<sup>20</sup> <https://www.london.gov.uk/node/47913#acc-i-54618>

will require legal assistance will logically not have straight forward cases and not many lawyers specialise in the area of EU law.

## **EU Settlement Scheme**

7.10 EU, EEA or Swiss citizens (and family members) can apply to the EU Settlement Scheme to continue living in the UK after 30 June 2021. All EU nationals will need to apply under the Settlement Scheme if they are to continue to live lawfully in the UK after that date.

7.11 The Migration Observatory, having analysed data on EU migrants, concluded in April 2018, that for the vast majority of EU migrants the application will be straight forward and simple:

*“The large majority of EU citizens should not have difficulty making an application. EU citizens in the UK have high average levels of education, a large majority are working, most are relatively young, and most do not report any problems such as low language ability or poor health. The share of EU citizens who are not internet users is low, so most should be in a good position to navigate an online application system.”<sup>21</sup>*

7.12 The only grounds for refusal, if people are deemed eligible to apply for settled status is serious criminality or on security grounds.

7.13 Assurances that most EU nationals will be granted permanent settlement under the new Scheme and that only serious criminals will be refused is articulated in the EU Withdrawal Agreement.

7.14 However, it is the view of Joint Council for the Welfare of Immigrants (JCWI) that there is likely to be a sizeable group of EU nationals who are not serious criminals, but may mandatorily be found to be ineligible for the scheme (under EU15(c)) because they<sup>22</sup>:

- have been issued with a removal notice, or notice of liability to be removed, from the UK for non-exercise, or ceasing to exercise Treaty rights (e.g. someone who had been told they were going to be removed because they weren't working or didn't have a genuine prospect of work if they were job-seeking, or didn't have comprehensive sickness insurance)
- have been issued with a removal notice, or notice of liability to be removed, from the UK for misuse of Treaty rights (for example, on the grounds of a supposed 'sham')

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<sup>21</sup> Unsettled Status: Which EU Citizens are at Risk of Failing to Secure their Right after Brexit <https://migrationobservatory.ox.ac.uk/resources/reports/unsettled-status-which-eu-citizens-are-at-risk-of-failing-to-secure-their-rights-after-brexite/> s.4 conclusion

<sup>22</sup> Broken Promise: EU Nationals Facing Removal, JCWI, Oct 2018 <http://www.jcwi.org.uk/sites/default/files/2018-10/Broken%20Promises%20EU%20Nationals%20Facing%20Removal%20After%20Brexit%20Briefing%20JCWI.pdf>

marriage or perhaps under the Home Office's previous unlawful policy of treating rough sleeping as an abuse of rights)

- are victims of trafficking with criminal convictions.

7.15 The Migration Observatory<sup>23</sup> estimates the number of non-Irish EU citizens<sup>24</sup> above the age of 18 who have been economically inactive for five years or more to be 213,000 people. JCWI argues that some of these individuals may have permanent residence status and a small number may have comprehensive health insurance allowing them to be lawfully here. However, many will not and would be liable to be removed were they to come to the attention of the Home Office.

### **EU Citizens likely to need legal advice and assistance**

7.16 The categories listed and statistic quoted below are from the Migration Observatory's report *Unsettled Status? Which EU Citizens are at Risk of Failing to Secure their Rights after Brexit?*<sup>25</sup>.

7.16.1 **People who do not realise that they need to apply.** Although applicants in this group may not necessarily require a lawyers' assistance, it will depend on their individual circumstances. Many people could unintentionally become undocumented after the EU Settlement Scheme comes to a close and therefore be unlawfully here and liable to removal if their status is not regularised. Many people may not apply because they incorrectly believe they do not need to, for example, people with very long residence - by 2017, 92,000 EU citizens had lived in the UK for at least 40 years, 146,000 for at least 30 years, and 284,000 for at least 20 years.

7.16.2 **People with existing permanent residence documents.** This group may not realise they need to reapply. Since 2004, 146,000 non-Irish EU citizens have been granted permanent residence but do not have British nationality.

7.16.3 **Children.** People who do not apply may not realise that their children also need to apply. Many may mistakenly believe that because their children are UK born, they will automatically be British citizens. Nationality law is complicated and unless a child is born to a British or EU parent who has permanent residence, they do not automatically acquire citizenship.

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<sup>23</sup> <https://migrationobservatory.ox.ac.uk/resources/reports/unsettled-status-which-eu-citizens-are-at-risk-of-failing-to-secure-their-rights-after-brexite/>

<sup>24</sup> Irish citizens will automatically have rights and do not need to apply for settled status

<sup>25</sup> Broken Promise: EU Nationals Facing Removal, JCWI, Oct 2018 <http://www.jcwi.org.uk/sites/default/files/2018-10/Broken%20Promises%20EU%20Nationals%20Facing%20Removal%20After%20Brexit%20Briefing%20JCWI.pdf>

In 2017, there were an estimated 727,000 children reported to be non-Irish EU citizens. Among them, 442,000 were born outside of the UK and thus would either need to apply for settled status or naturalise with their parents (if the parents are eligible to do so).

A further 116,000 were born in the UK but their parents had not been in the UK for five years or more therefore the parent would not be able to acquire permanent residence and the children would not automatically get British citizenship.

A further 239,000 UK born children had parents who were EU nationals, but they were reported by their parents to be British. But as the EU parent requires permanent residence, which can only be achieved after 5 years continuous residence in the UK, it is possible to look at the available data and conclude that 55,000 of these children did not have a parent who had been in the UK for longer than five years.

Home Office data suggest that only about 29,700 EU (including Irish) citizens under the age of 18 have been granted UK citizenship<sup>26</sup>. The Migration Observatory argue that possibly tens of thousands of children of EU citizens have parents who do not realise that they are not automatically UK citizens, and so are unlikely to register them for settled status.

**7.16.4 Victims of Domestic Violence.** In the year ending 2017, it was an estimated that there were 53,000 female EU victims and 34,000 male EU victims who had suffered domestic violence.<sup>27</sup> Such victims are usually controlled by their partners and may fail to produce documentary evidence of their residence especially if they rely on their partner for it. It is very hard to gauge the exact circumstances of the cases and whether any such individual would seek independent help.

**7.16.5 Victims of exploitation or trafficking.** Similarly, are unlikely to have evidence of their residence or pay. Working unlawfully would also be a crime which could bar individuals from a settlement grant even if they did manage to apply.

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<sup>26</sup> HO immigration statistics, table cz\_05, excluding 16-17-year olds registering before 2015 who would have been 18 or more by 2017

<sup>27</sup> Source: data provided by ONS from Crime Survey of England and Wales, Year ending March 2017; population estimates from Migration Observatory analysis of Labour Force Survey for Q1 2016 – the mid-point of the period during which crimes reported in YE March 2017 would have occurred. Note: This measure of any domestic abuse experienced in the last year relates to adults aged 16 to 59 only and is taken from the self-completion section of the survey which is designed to reduce the extent of underreporting for sensitive issues that respondents may not want to discuss openly with an interviewer. Full details of the offences included are provided in ONS (2018b, p52). All figures include Irish nationals.

Individuals in this category will have multiple issues to resolve in order to regularise their status will need legal and professional assistance. Numbers are very hard to predict. The Home Office estimated the number of victims at 10,000-13,000 of any nationality as of 2013. The 'duty to notify' introduced by the Modern Slavery Act 2015 requires public bodies such as the police, the National Crime Agency and local authorities, to report to the Government all potential adult victims of modern slavery encountered in England and Wales. Between November 2015 and June 2017, agencies under the 'duty to notify' (Modern Slavery Act 2015) reported 746 cases of potential victims in England and Wales who were from an EEA country.

- 7.16.6 **People with mental health issues and other disabilities.** People in this situation may struggle to understand both the need to apply and the process. They may not be able to show continuous residency documentation. It has not been possible to obtain data for this cohort. However, with regard to mental health, 45,000 non-Irish EU citizens reported a mental health issue. About half said that this condition limited their daily activity 'a little' and a further quarter said that it limited their daily activity 'a lot'.<sup>28</sup>
- 7.16.7 **Third-country family members.** People who suffer from any of the above or whose partner has died and are reliant on their partner or family member for their status may have even more difficulties as they have no right to apply in their own right. Existing EU law does allow for retained rights of residence in these circumstances.
- 7.16.8 **The Elderly.** Many will be long term residents as noted above. Older residents may also have limited information on their past immigration status. Those who have family members to help will be less at risk than those who are more isolated or in care homes. The 2011 Census included 5,600 non-Irish EU born people age 75 or older who were living in communal establishments such as care homes.<sup>29</sup> Older foreign-born residents were also among those more likely to report not having a passport in the 2011 census. On-line literacy is also a further barrier for this cohort as the application process is electronic.
- 7.16.9 **People with chaotic lives.** This group will struggle to provide evidence of residence in order to obtain to settled status easily. For example, rough

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<sup>28</sup> Source: Migration Observatory analysis of LFS, 2017. Note: respondents select from list of possible health problems and are included here if they both select 'depression, bad nerves or anxiety' or 'mental illness or suffer from phobias, panics or other nervous disorders' and if they report that this is their main health problem and that it has lasted or is expected to last at least 12 months.

<sup>29</sup> Census Table DC2118EW1a

sleepers; the Housing, Communities and Local Government (2018) estimate said there were 760 EEA national rough sleepers in England during the Autumn of 2017, but the Combined Homelessness and Information Network (CHAIN) counted 3,000 EEA national rough sleepers in London alone between April 2016 and March 2017. People from Roma communities who move about frequently may suffer. In the 2011 census<sup>30</sup>, 59,000 people reported their ethnicity as Gypsy or Traveler.

- 7.17 As the above information shows it is very difficult to predict the numbers of EU migrants who may struggle to secure settled status. Here for Good has stated that even if 10 per cent of the EU migrants currently in the UK are vulnerable or have difficulties with their applications this would amount to 380,000 people (122,000 in London). The figure of 10 per cent is reiterated by many immigration lawyers as a conservative rule of thumb.

### **Estimated Numbers of Undocumented Migrants**

- 7.18 Undocumented migrants have NRPF.
- 7.19 In 2005 the Home Office commissioned a study on the numbers of undocumented migrants. (Woodridge)<sup>31</sup>. The overall estimate was presented as a range of between 310,000 and 570,000 with a central estimate of 430,000, as at census day 2001. The London School of Economics, commissioned by the Mayor of London, did a further study in 2007<sup>32</sup>; it updated the Woodridge study and added in the children of undocumented migrants which Woodridge had not included. Its range was 417,000 to 863,000, with a central estimate of 618,000 at the end of 2007. About 70 per cent of all irregular migrants are estimated to be in London. There has not been a comprehensive study since then.
- 7.20 Calling for regularisation or trying to map provision to assist undocumented migrants requires a disaggregation of these numbers. Using London School of Economics data and official statistics from 2001 it is possible to draw some rough numerical estimates. There are many statistical caveats and the purpose of these numbers is illustrative at best.
- 7.21 Most irregular migrants are asylum seekers. For this category there is statistical data. In 2001, there were 286,000 failed asylum seekers. Considering removals and voluntary departures it is estimated that there was a resident population of 219,000 failed asylum

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<sup>30</sup> Census table CT0769

<sup>31</sup> Woodbridge J (2005) Sizing the unauthorised (illegal) migrant population in the United Kingdom in 2001 <https://www.ons.gov.uk/aboutus/transparencyandgovernance/freedomofinformationfoi/illegalimmigrantsintheuk> [PDF link to report on web page]

<sup>32</sup> Economic impact on the London and UK economy of an earned regularisation of irregular migrants to the UK, LSE, May 2009

seekers as at 2007 (almost two-thirds of the Home Office's estimate of total 'illegal' migrants).

- 7.22 Children who are UK born to undocumented migrant parents have been estimated to be between 44,000 - 144,000.
- 7.23 The remaining figure is made up of illegal entrants and overstayers and whilst it is very difficult to disaggregate this category it is a widely held assertion that the majority of this category is likely to be overstayers, many of whom will have been in the UK for lengthy periods of time.

## **8 Increasing immigration provision**

- 8.1 The report concludes that the evidence demonstrates it is imperative to increase the number of specialist immigration advisers as need significantly outstrips supply. The report suggests that increasing legal provision could provide an opportunity to create a more strategic immigration legal sector which could have a strong national voice, the ability to meaningfully assist vulnerable clients and to reform immigration law over the long term.
- 8.2 The final section discusses:
  - 8.2.1 increasing the number of specialist immigration lawyers and OISC level 3 providers (ideally with understanding of EU regulations and directives) who are able to provide free immigration legal advice and representation to vulnerable clients
  - 8.2.2 increasing free legal advice through the existing exceptional case funding framework which has been simplified and is proving successful in many immigration cases - this is an area where peer learning, information and training in making applications would assist in increasing take up
  - 8.2.3 assessing why providers who apply for legal aid Contracts but fail to use their 'matter starts' or leave the scheme to better understand and address the difficulties with legal aid
  - 8.2.4 harnessing existing private and pro bono provision and encouraging more private immigration solicitors to undertake work for vulnerable groups
  - 8.2.5 undertaking detailed research on regional need and provision.
- 8.3 The report highlights that although London has the most immigration providers it also has the most vulnerable migrants in need of legal assistance: 70 per cent of the 618,000

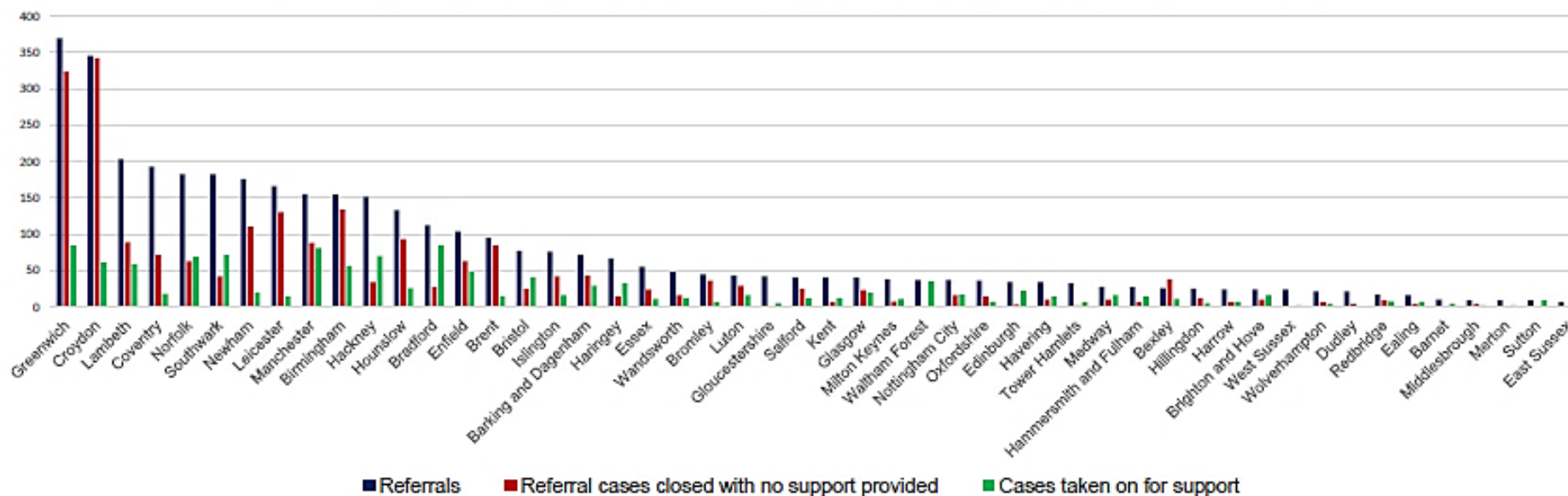
undocumented migrants identified by the London School of Economics in 2007 are in London (432,600) and the majority of EU migrants live in London (1,221,000).

## **9 Current NRPF demands and pressures**

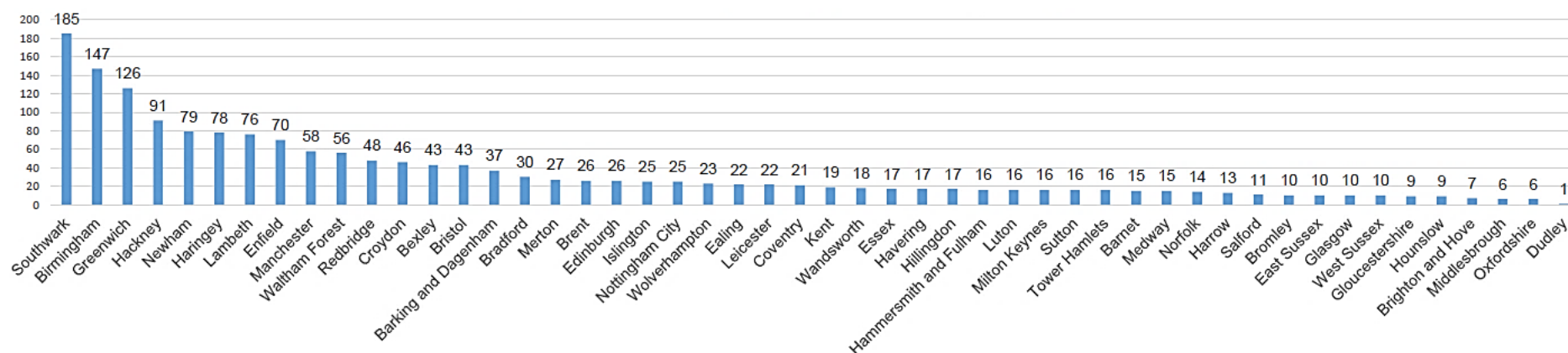
- 9.1 There is not enough quantitative data available to accurately establish a financial return on investment figure (see paragraph 9.3.2), however; available research does show that the lack of capacity to meet demand for immigration advice places individuals at increased risk of becoming destitute, which in turn puts greater pressure on local authority resources.
- 9.2 An increase in advice services, particularly in services that can resolve lower-complexity immigration issues, has the potential to make a significant impact. *Access Denied: The cost of the 'no recourse to public funds' policy*, A. Woolley (2019) highlights the work of a small project, based in Southwark, that supports people with NRPF through the change of circumstance (CoC) process (to remove the NRPF condition). Since the project's inception in May 2017, it has received referrals for over 300 individuals and families and has an 86 per cent first CoC application success rate, or 98 per cent if counting successful challenges. The Home Office response to a Freedom of Information request indicated that between April 2015 and December 2018 they accepted 55 per cent of applications.
- 9.3 The NRPF Network collects and publishes data from 59 local authorities using the NRPF Connect database. This database provides information about the households that requested, and were provided with, social services' support in the financial year 2018-19. Key findings from the data include:
  - 9.3.1 59 local authorities supported 2,658 households at an annual cost of £47.5 million (at year end)
  - 9.3.2 local authorities saw an overall reduction of £100,000 week (10 per cent over the year) due to a decrease in the number of households receiving support by the year end
  - 9.3.3 requests for support increased by 17 per cent compared to 2017-18
- 9.4 The data clearly shows that local authorities are facing an increasing number of requests for support. It demonstrates that there continues to be a significant number of people unable to access mainstream services due to their immigration status and who need to navigate complex rules regarding their entitlement to services.

- 9.5 The average time that households were provided with support increased to 820 days throughout the year. With 80 per cent of households leaving the service following a grant to leave to remain with recourse to public funds, any barriers that delay achieving this outcome lead to increasing costs for local government. Additionally, being excluded from employment and mainstream benefits for lengthy periods of time negatively impacts on the wellbeing and integration of children and adults who have a future in the UK.
- 9.6 Of the 59 local authorities that used NRPF Collect in 2018-19, 27 are London local authorities:
- 9.6.1 Barking & Dagenham, Barnet, Bexley, Brent, Bromley, Croydon, Ealing, Enfield, Greenwich, Hackney, Hammersmith & Fulham, Haringey, Harrow, Havering, Hillingdon, Hounslow, Islington, Lambeth, Lewisham, Merton, Newham, Redbridge, Southwark, Sutton, Tower Hamlets, Waltham Forest, Wandsworth
- 9.6.2 Camden and Westminster subscribed to the database after March 2019.
- 9.7 Borough data from NRPF Collect is presented below. The first graph shows referrals and cases over a 12 month period; the remaining graphs provide a snapshot of caseload activity at the end of a quarter. Whilst activity related to NRPF is not equally dispersed across local authority areas, all but one of the reporting London boroughs were dealing with cases. Using data made available through NRPF Collect, the NRPF Network has calculated that the average annual cost per case (providing accommodation and subsistence) was £17,094
- 9.8 NRPF Collect caseload data indicates that the majority (67 per cent) of households receiving financial support were families supported under S17 of the Children Act 1989, 19 per cent of households were vulnerable adults supported under the Care Act 2014, and 14 per cent were unaccompanied migrant children or care leavers.

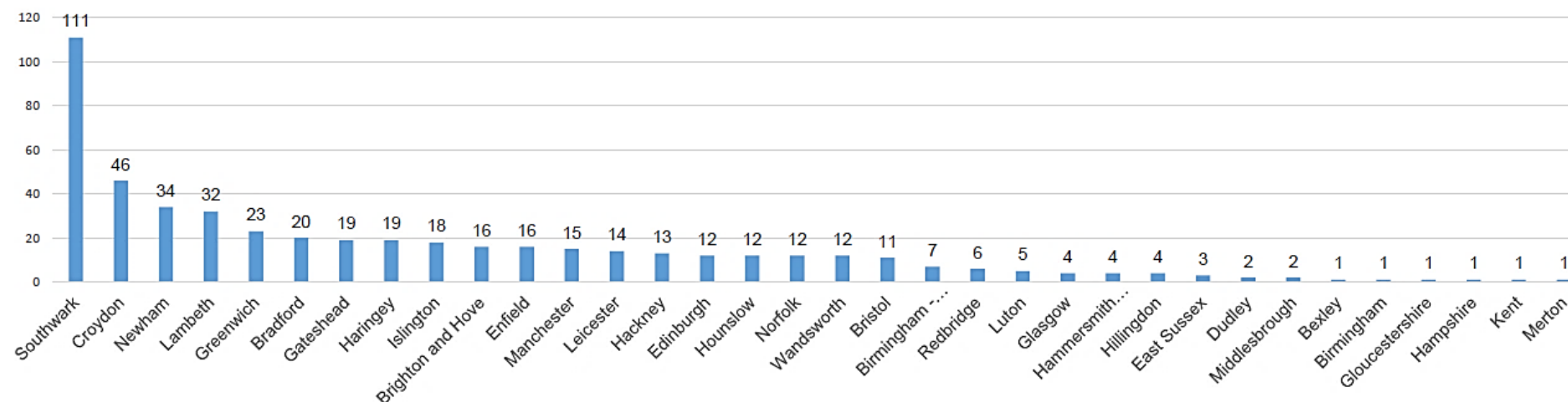
**All households - Referrals received compared to cases financially supported and cases closed with no support provided (Q3 17/18 to Q2 18/19)**



**Total Number of Family Cases Supported as at End of Q2 18/19 by Local Authority**

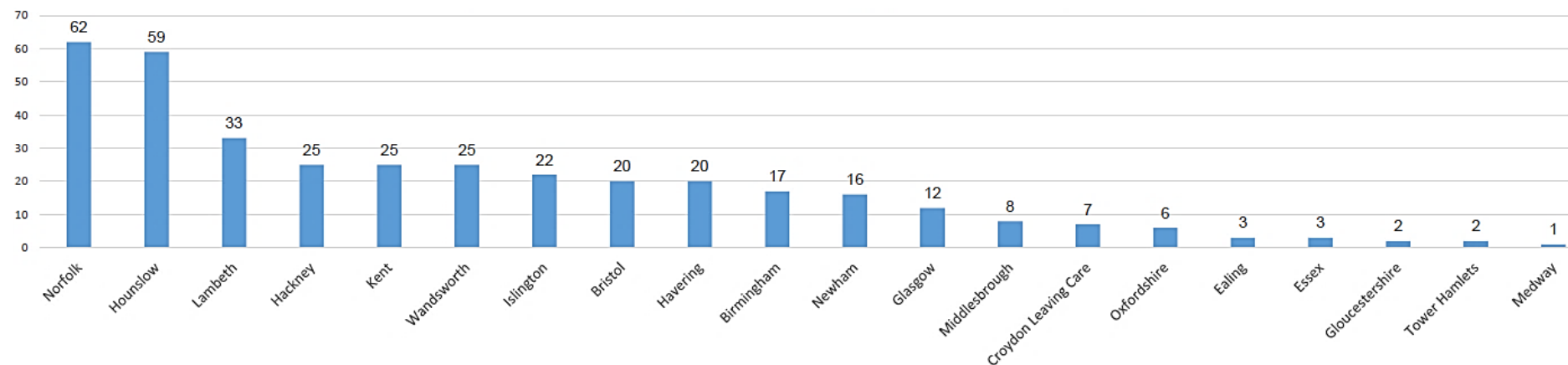


### Total Number of Single Adults Cases Supported as at End of Q2 18/19 by Local Authority



When compared to family caseloads, it is expected that the overall number of single adult cases will be significantly lower on account of the higher threshold to engage the local authority 'safety-net'. A single adult must have an assessed care and support need - over and above destitution - in order to qualify for accommodation under governing legislation. Adult cases are particularly complex for local authorities to resolve.

### Total Number of Leaving Care Cases financially supported as at End of Q2 18/19 by Local Authority



## **10 Awarding Grants**

- 10.1 Legal advice has been sought to ensure the proper management of the funds discussed in this paper. The following approach was discussed with London Councils' solicitors and, based on the information provided – information about current Grants programme performance, Section 48 grant making powers, the examination of demand for immigration advice services for users with NRPF, consultation with partners through the mid-programme review, consultation with boroughs through the NRPF Network, the Modern Slavery Network, Borough Grants Officers and Grants Committee members - was confirmed as a reasonable and proportionate way forward (see also 'Legal advice for London Councils' below, which summarises the legal requirements of good decision-making by public authorities).
- 10.2 To ensure that additional provision of immigration advice services is locked into Priority 1 and Priority 2 activity, and to enable the swift release of funding, the grant agreements that are in place with existing Priority 1 and Priority 2 delivery partners can be renegotiated to include this additional provision.
- 10.3 Under the existing agreements, lead partners make sub-partner arrangements that include terms and financial agreements. London Councils will expect that arrangements made with lead partners will include further sub-partner arrangements with appropriately qualified organisations for the delivery of immigration advice services for users with NRPF.
- 10.4 Negotiations with lead partners will take account of the current size of delivery networks, the nature of the service provision already in place, and the type of immigration advice services that users are likely to need. For example, partners delivering services to users fleeing sexual and/or domestic violence are far more likely to need immigration advice that addresses complex issues. Consequently, there will not be a 'one size fits all' approach to the negotiations.
- 10.5 London Councils will also expect lead partners to work with each other to agree good referral pathways between immigration advice services, to ensure that the current problem of lack of higher-level advice (OISC Level 3 (and above) - conduct of specialist casework, preparation of cases at the First-tier and Upper Tribunal, representing clients before the First-tier and Upper Tribunal, instructing barristers or members of the Faculty of Advocates) can also be addressed for service users.

## **11 Recommendations**

### **11.1 Grants Committee is recommended to:**

- 11.1.1 agree that £1,019,000 Priority 3 underspend is used to increase Priority 1 and 2 grants for the sole purpose of increasing immigration advice for service users with No Recourse to Public Funds.
- 11.1.2 agree that the terms of the funding agreements with current Priority 1 and Priority 2 partners are re-negotiated to include the provision of immigration advice services, through appropriately qualified organisations, for users with No Recourse to Public Funds; these terms to be negotiated and agreed with the Director responsible for the Grants Programme
- 11.1.3 agree that the grant values agreed with current Priority 1 and Priority 2 partners are increased, where appropriate, and in line with renegotiated terms to enable the provision of immigration advice services to users with No Recourse to Public Funds; these grant values to be negotiated and agreed with the Director responsible for the Grants Programme.
- 11.1.4 to provide some oversight and scrutiny, agree that negotiated terms are discussed with the Chair and Vice Chairs of the Grants Committee prior to sign-off.

## Financial Implications for London Councils

As detailed in the month 6 forecast report which is a separate item on this agenda, the Director of Corporate Resources reports that there is £1,019,000 of Borough contributions remaining following the completion of the Priority 3 programme. These funds are held in Committee reserves and are subject to a Member decision on their future application.

## Legal Implications for London Councils

London Councils manages the London Councils Grants Programme on behalf of all the boroughs and the City of London. The Programme makes grants to voluntary organisations to deliver improved outcomes for Londoners.

The Programme operates within a scheme made under Section 48 of the Local Government Act 1985. It is a collective scheme i.e. all the boroughs fund the Programme, through a levy contribution based on the boroughs proportion of the capital's population. Boroughs must exercise their functions in respect of the scheme 'with due regard to the needs of the whole of Greater London'.

Leaders' Committee determines the principles and priorities of the Programme and the overall budget of the Programme. The Grants Committee commissions services, makes awards of funding, manages projects' performance and may advise Leaders' Committee on the Programme.

The legal requirements of good decision-making by public authorities, in summary, require the following:

1. **Declaration of interests:** The principle being, a decision maker should not be a "judge in his own cause". Where a decision-maker has an interest in the subject of a decision he is making it is likely to preclude his participation in the decision where – the decision will affect a friend or relation, the decision-maker has a financial interest in its outcome, the decision-maker is a director of an organisation affected by the outcome of the decision, the decision-maker is a member of group campaigning for one outcome or another, the decision maker's spouse, civil partner or other close family member has an interest in the outcome. Although a close connection with the subject of the decision will automatically disqualify a person from making a decision, declaration of a less direct interest before a decision is made may permit them to take part. In the latter circumstances the person concerned and any colleagues participating in the decision-making process must decide whether the connection would lead a fair-minded and informed observer to conclude that there was a real possibility that the decision-maker would be biased if they took part. London Councils has policies and procedures to assist in managing these matters, with Members being required to comply with their own authority's Code of Conduct.
2. **Following correct procedure:** A decision-maker will often be required to follow a set procedure for making its decisions, whether set out in statute or set by the decision-maker itself. Any such procedures are usually drafted with the purposes of both ensuring the decision-maker takes into account all relevant considerations as well as ensuring procedural fairness for those affected by the decision. In taking decisions which engage consideration of specific duties, such as the equalities duties, any process must ensure that those duties are also met. In your case, this will ensure that you turn your mind to, and can evidence that you have had due regard to the public sector equality duty in taking the

decision. As you know this does not necessarily require a formal public consultation or EIA (but see below). Examples of prescribed procedures for decision-makers include express duties to: consult, give reasons for decisions, be informed of a right to appeal (if there is one), etc. NB: Whilst it is necessary for a public body making decisions to follow a set procedure that will not of itself render the procedure fair, and in certain circumstances it may also be appropriate/fair to depart from the published procedure.

3. **Consultation:** Public bodies are required by law to consult before making decisions, particularly in the context of making policies or issuing guidance. In some cases, there is an express duty to consult and a statutory process which must be followed. There is no express statutory requirement to consult under the Grants Scheme, although in having due regard to the needs of the whole of Greater London in making the scheme and exercising the relevant functions under section 48 of the Local Government Act 1985, and specifically in meeting the duty under subs 48(10) to keep the needs of the whole of Greater London under review, one must have regard to the general public law principles and requirements relating to consultation. There is published government guidance (<https://www.gov.uk/government/publications/consultation-principles-guidance>) and London Councils should have regard to this guidance
4. **Rational and evidence-based:** A public body must take rational decisions. An irrational or unreasonable decision is one that was not objectively rational and reasonably open to the decision-maker. Evidence-based decisions help to ensure that decisions are objectively reasonable.
5. **All relevant considerations:** A decision maker must ensure that it takes into account all relevant considerations in reaching a rational and evidence-based decision. The subject matter of the decision will inform what is relevant. EG: the proposal, response to consultation, guidance on parameters for decision, costs of decision, effects of the decision on others (including, for example, having due regard to the decision-makers' public sector equality duty), advice from officers, etc.
6. **Proper purpose:** A public body must act for a proper purpose and in taking their decisions decision-makers must apply their minds to the correct statutory objective. A public body must act in good faith.
7. **Proportionate:** Public decision-makers should act in a way that is proportionate. Proportionate decisions are also likely to be rational, evidence-based and reasonable.
8. **Properly reasoned:** Procedural requirements on public decision-makers require that reasons must be given for their decisions. Reasons do not need to be excessively detailed, but do need to be adequate. Adequate decisions – deal with all the substantial points that have been raised; are sufficient for the parties to know whether the decision-maker has made an error of law; set out and explain key aspects of the decision-maker's reasoning in coming to its conclusion; include all aspects of reasoning that were material to the decision; but do not need to set out in detail all the evidence and arguments referred to by the decision-maker. The reasons for decisions should be recorded at the time the decisions are made.
9. With reference to the above, the standard grounds for judicial review are on the basis that a decision: was unlawful/ultra vires; was irrational; or was procedurally unfair - in that the decision-maker has not properly observed the relevant procedures (whether set by statute or by itself) e.g. it has failed to consult or give reasons for its decision, or there has been a

failure to observe the principles of natural justice in the decision-making process e.g. evidence of bias.

Further, a public authority should also be careful not to raise a further ground of challenge if, through their own conduct or statements, they have established a legitimate expectation as to how the public body will act. A legitimate expectation may arise exceptionally in three cases – where the decision-maker has made a clear and unambiguous representation that it will adopt a particular form of procedure above and beyond that which it would otherwise been required to adopt; where the claimant has an interest in some ultimate benefit that it hopes to attain or retain fairness may require the claimant to be given an opportunity to make representations; and where the decision-maker has a substantive right on which it was reasonable for the claimant to rely. Public bodies may change their policies or depart from them (and so not fetter their discretion), and so a legitimate expectation will only arise if departure from the existing policies was an abuse of power.

### **Equalities Implications for London Councils**

London Councils' funded services provide support to people within all the protected characteristics (Equality Act 2010), and targets groups highlighted as particularly hard to reach or more affected by the issues being tackled. Funded organisations are also required to submit equalities monitoring data, which can be collated across the grants scheme to provide data on the take up of services and gaps in provision to be addressed. The grants team reviews this data annually.

### **Background documents**

Grants Committee Executive, 7 February 2019 Item 4 - ESF Match Funded Priority 3: Tackling Poverty Trough Employment

Grants Committee, 20 March 2019, Item 6 - Priority 3: Options for anticipated underspend

Grants Committee (AGM), 10 July 2019, Item 13 - Priority 3 Underspend: addressing issues related to No Recourse to Public Funds

**Priority 1: Combatting Homelessness - Shelter, STAR Project**

I came to the UK from Bangladesh on a student visa to study. My wife and two children (aged 3 and 4) joined me shortly after. When my student visa expired, I applied for a Family visa. This was rejected five times as I was unable to afford the fee to pay for the application to be submitted. I finally managed to borrow some money to do this, but it was rejected once more.

Whilst I was studying, I was working in Asda until my contract ended. Since then I have been relying on friends and family for financial support. We have had a very unsettled housing situation and frequently have had to move to different properties, relying on friends for help. We are now living in one room in a shared house and share a kitchen and bathroom with other people. My family and friends have been helping me pay the rent, but it is becoming increasingly difficult to rely on this. This summer, the landlord decided to not renew our tenancy and we are now facing eviction. We couldn't afford to find somewhere else to live and so our landlord has been harassing us continuously to encourage us to leave. He most recently has removed the front door to the property in an effort to get us out quicker. I have had to use the door to our room to replace the front door leaving my family and I without privacy.

Since getting help from Shelter things are getting better for my family and I. Shelter contacted the environmental health department at our council, and the private housing team about my landlord. They discovered that the landlord did not have the correct licence to rent the property as a housing in multiple occupation (HMO) and have been to inspect the property. They have said that they will take action against the landlord.

Most importantly, we are now at risk of homelessness and I am still having to borrow money from family and friends to afford rent and food. Shelter have helped me get assistance from the no recourse to public funds team at my council and children's services have said that they will help accommodate myself and my family when we finally are lawfully evicted and have to leave this property. In addition, they have helped me to get support from an organisation called RISE who help people in my situation find work and they have provided me with foodbank vouchers.

Shelter has also made sure that I am getting the proper immigration advice and have linked me in with a pro bono solicitor who has taken on my appeal against the Home Office.

Shelter is still working with my family and myself to help us through this situation.

**Priority 2: Solace Women's Aid - Ascent Housing Project**

I first called the Advice line with the help of my friend who speaks English, as my English is very limited. I called after I had just fled from my husband who had locked me in the house for three days with no food. I managed to leave by threatening to call the police, he then left the keys, and then I managed to make my escape.

I had suffered verbal, emotional, financial and physical abuse from him, and he was very controlling, not allowing me to learn English or work in my profession as an artist. After I fled, I was staying with a friend but had to leave due to overcrowding, I was then having to sleep outside in the park and on the night bus. I had support from an IDVA then I was referred to the Housing Project to work with a worker around housing support. I had previously approached several councils who found me not eligible for housing support due to having no recourse to public funds. I was also found to be not meeting the threshold for support from Adult Social Care, even though I am disabled and 62 years old. I was due to have a heart operation and an

operation on my arm and couldn't recover from the operations having nowhere to live. I was so sad to become homeless as previously I had worked for over 40 years as an art lecturer and artist, now the only place I had to stay was the streets.

When I was referred to the Housing Project, the worker set up an appointment with a solicitor who took on my case with legal aid. He suggested that I could make a homelessness application as I would be eligible as a self-employed EU National. The worker managed to secure the Ascent No Recourse Fund run by Southall Black Sisters for my accommodation and I was able to stay for 6 weeks in basic hotel accommodation with some subsistence paid for, so I no longer had to sleep on the night bus and in airports. Then the worker supported me to apply as homeless to the council, who accepted interim duty and housed me in a self-contained flat.