

Pathways out of migrant destitution through a change in immigration status



This paper is aimed at advisers and support workers working with migrants who are experiencing destitution and homelessness.

Immigration status can both cause and compound destitution.

Changing a person's immigration status can create an entitlement to social security and housing and so should always be considered by advisers.

This paper identifies a number of immigration applications that advisers should consider as potential pathways out of destitution. It also outlines a number of interim accommodation options that might provide temporary relief while immigration options are being explored.

Pathways out of migrant destitution through a change in immigration status



Contents

IMMIGRATION STATUS.....	3
1. Apply to the EU Settlement Scheme (EUSS).....	4
2. Apply to lift the NRPF condition to provide access to social security.....	5
3. Apply for access to social security and leave to remain as a victim of domestic violence.....	6
4. Apply to be recognised as refugee	7
5. Apply to be recognised as victim / survivor of human trafficking through the NRM	8
ACCOMMODATION / FINANCIAL SUPPORT	9
1. MoU 'Everyone in'	9
1. Support from Health and Social Care Trust	10
2. Accommodation for immigration detainees, former prisoners and migrants at risk of human rights breach.....	11
3. TEO Crisis Fund support	12
RETURNING TO HOME COUNTRY.....	13
2. Voluntary Returns Service	13
KEY CONTACTS	14

Pathways out of migrant destitution through a change in immigration status



IMMIGRATION STATUS

Immigration status can both cause and compound destitution. Changing a person's immigration status may create an entitlement to social security and housing.

While only OISC-regulated (or exempt) advisers can give immigration advice, it is important that generalist welfare advisers are aware of, and can signpost to, the different immigration options that may assist migrants access financial support.

Although these applications may potentially open up a route to financial support, there may be long-term implications that must be properly considered by the applicant. It is therefore particularly important that specialist immigration advice is sought promptly.

There are a number of organisations that can provide free immigration advice. These are outlined in the Key Contacts section at the end of this paper.

The following immigration applications might be applicable:

Applications	Relief
Apply to the EU Settlement Scheme	If these applications are granted, the migrant will obtain some entitlement (however limited) to financial support.
Apply to lift the NRPF condition	
Apply for access to social security and leave to remain as a victim of domestic violence	Interim financial support is available pending the outcome of <i>some</i> of these applications.
Apply to be recognised as a refugee	
Apply to be recognised as a victim / survivor of human trafficking	

Pathways out of migrant destitution through a change in immigration status



1. Apply to the EU Settlement Scheme (EUSS)

What is it	EUSS is a registration process for EEA nationals and their family members who arrived in UK before 30 December 2020 and who wish to continue to live in Northern Ireland now that the UK has left the EU.
Who can apply	<p>In general, any EEA national who does not also have a British passport must apply to EUSS. To be eligible, a person must have been resident in the UK before 31 December 2020. Persons who may apply include:</p> <ul style="list-style-type: none"> • An EEA national • A non EEA national who is a family member of an EEA national or a Northern Irish national. Family member includes: spouse, civil partners, unmarried partners (who have been together 2 years), parents, children < 21 years. 'Extended' family members such as children over 21, parents and grandparents may be eligible if dependent on their EEA family member. • A non EEA national caring for an EEA / Irish / British child or adult. • An EEA/non-EEA national who is the family member of a British citizen, who they lived with elsewhere in the EU, before returning to the UK. The EUSS deadline for this route is 29 March 2022. <p>Note that it <i>may</i> be possible for some EEA/non EEA nationals who arrived in UK <u>after</u> 1 January 2021 without a visa to apply to the EUSS as a joining family member. Applications must be submitted within 90 days of arrival in the UK. Seek specialist advice.</p>
How does it help	<p>Successful EUSS applicants will receive either:</p> <ul style="list-style-type: none"> • Settled Status. This is for persons who have lived 5+ years in the UK. It provides access to work and full entitlement to social security. • Pre Settled Status. This is for persons who have lived < 5 years in the UK. It provides access to work and limited entitlement to social security: to qualify for means-tested benefits, a person must be exercising an 'additional' right to reside e.g. 'worker'. A person with Pre Settled Status may claim contribution based benefits and can also apply for PIP one she meets the two year past presence requirement.
How to apply	<p>The application is free and can be made online with a smartphone. Even though the deadline for applications has now passed (30 June 2021), the Home Office is continuing to receive late applications from persons who can show 'reasonable grounds' for the delay. It is advisable to seek immigration advice i.e. to identify a reason to the late application.</p>
Need to know	<p>The Home Office is currently adopting a flexible approach to late applications. We do not know how long this option will be available and so potential applicants should not delay in applying.</p> <p>EUSS applicants are issued a Certificate of Application (CoA) pending the decision. The CoA protects <i>existing</i> rights until a decision is made. So, whether a person with a CoA has a benefit entitlement depends on their previous immigration status. Seek specialist advice if not sure.</p> <p>EUSS can offer a lifeline to a destitute migrant (inc. overstayers, undocumented and refused asylum seekers) who have been in a relationship with a 'local' person for 2+ years. Keep an eye out!</p>

Pathways out of migrant destitution through a change in immigration status



2. Apply to lift the NRPF condition to provide access to social security

What is it	Most migrants with a time-limited visa are subject to the ‘No Recourse to Public Funds’ (NRPF) condition, which means that they cannot access means-tested benefits. It is possible to request that the Home Office lifts the condition where it is causing financial hardship. See here .
Who can apply	Not everyone subject to NRPF is eligible to apply to have the condition lifted. This remedy only applies to persons who have Limited Leave to Remain. Unfortunately, this means that asylum seekers or undocumented migrants are not eligible. Persons who may be eligible have Limited Leave to Remain and include: <ul style="list-style-type: none"> • parents of a child who has British citizenship; • partners (including spouse, civil partner or fiancé) of a person who has British citizenship / settlement; • persons granted leave to remain on human rights grounds; • persons from Hong Kong who are BN(O) visa holders
How does it help	If the NRPF condition is removed, the person can apply for means-tested social security benefits such as Universal Credit and Discretionary Support and can request housing assistance from NIHE.
How to apply	To apply, the person must apply to the Home Office to ‘vary the conditions’ of their leave. Applications can be made online and are free.
Need to know	<p>While lifting the NRPF provides immediate financial benefits, there may be some long-term implications on the person’s immigration status.¹ Therefore it is recommended that a person obtains legal advice <i>before</i> making the application from an OISC Level 1 adviser.</p> <p>Remember that a person who is subject to NRPF can claim contribution-based benefits without it impacting immigration status.</p> <p>Tread very carefully: there can be serious and long-term repercussions if a person subject to NRPF makes a claim for means-tested benefits.</p>

¹ For example, if a person with leave to remain under the 5 year partner/parent route applies to have her NRPF condition lifted, she will be considered to have moved to the 10 year route to settlement.

Pathways out of migrant destitution through a change in immigration status



3. Apply for access to social security and leave to remain as a victim of domestic violence

What is it	The Destitution Domestic Violence (DDV) Concession is designed to ensure that migrants who experience domestic violence can leave their abusive partner. A victim of domestic violence can apply for three months' leave with access to public funds .
Who can apply	This application is available for persons who are in the UK on a temporary visa, whose relationship has broken down due to domestic violence, and who has no money to support themselves. This applies to: <ul style="list-style-type: none"> • Spouse • Civil partner • Unmarried or same-sex partner Of a: <ul style="list-style-type: none"> • British citizen • Person with Indefinite Leave to Remain • Person with refugee status (including refugee family reunion spouses)
How does it help	If the application is successful, access to public funds is granted for 3 months. This enables the victim to move away from the perpetrator, for example, to move into a women's refuge or obtain Universal Credit to secure her own accommodation. During this 3 month period, the victim should apply to settle (ILR).
How to apply	There are two separate applications: first, to request the 3 months leave to access public funds and second to obtain ILR as a victim of domestic violence.
Need to know	Specialist immigration advice is essential as the timeframes are tight. Note that any leave granted through this route will supersede any current leave and cannot be reversed. It is critical therefore that the victim understands the implications before applying. Tread very carefully. Make sure your actions do not put the victim at further risk of harm. The Domestic & Sexual Abuse Helpline can provide support and guidance. 0808 802 1414.

Pathways out of migrant destitution through a change in immigration status



4. Apply to be recognised as refugee

What is it	International law protects the right to claim asylum. If the Home Office grants asylum, the asylum seeker will be recognised as a refugee and will obtain Limited Leave to Remain for 5 years. While the asylum determination procedure is underway most asylum seekers are eligible for asylum support.
Who can apply	<p>A person who fears persecution or serious harm if returned to their home country.</p> <p>A refused asylum seeker may be able to submit a ‘fresh claim’ for asylum. For a fresh claim to be accepted by the Home Office, the information provided might be new evidence about the original asylum claim; it might be that the person’s situation has changed since claiming asylum; the situation in their home country might have changed or subsequent caselaw might have changed the way cases are dealt with. The Home Office must agree that the new evidence has ‘realistic prospects of success’.</p>
How does it help	<p>Any person who has claimed asylum can apply for asylum accommodation (often referred to as “NASS”) and financial support. There are different types of asylum accommodation available depending on circumstances and the status of the asylum claim. The financial support is very basic e.g. £39 per person per week.</p> <p>If a refused asylum seeker succeeds in lodging a ‘fresh claim’ application, s/he may apply for s.4 NASS support. For adults, this consists of accommodation and a pre-paid card.</p>
How to apply	The person must first apply for asylum at the Home Office and may then apply to Migrant Help for asylum support.
Need to know	<p>The decision to claim asylum should not be taken lightly. The asylum process can be very lengthy (several years) and asylum seekers are subject to a number of very tough restrictions including on travel and a prohibition on work.</p> <p>Note that when a person claims asylum, any existing leave to remain is likely to be cancelled. Note also that asylum accommodation is offered on a ‘no choice’ basis and is likely to be basic.</p> <p>Refused asylum seekers should obtain specialist immigration advice before submitting a fresh claim for asylum.</p>

Pathways out of migrant destitution through a change in immigration status



5. Apply to be recognised as victim / survivor of human trafficking through the NRM

What is it?	The National Referral Mechanism (NRM) is the process by which the UK government determines if someone is a victim of modern slavery / human trafficking.
Who can apply?	<p>Any person who has been exploited i.e. made to work or do something against their will. This applies to EEA migrants, non EEA migrants (and also to local people).</p> <p>There is a link between human trafficking and homelessness. People who are homeless or insecurely housed can be targeted by exploiters. Some people may become homeless after escaping situations of exploitation. Some people who appear to be homeless could be subject to criminal exploitation (e.g. forced begging).</p>
How does it alleviate poverty?	A person who is referred into NRM has entitlement to a package of support while the trafficking claim is being examined. This includes accommodation and a weekly financial payment as well as access to specialist support services such as counselling and legal advice.
How to apply?	<p>Only designated agencies known as 'First Responders' can make referrals into the NRM. The PSNI usually fulfil this role for adults whereas Social Services fulfil this role for children.</p> <p>Advice organisations and migrant community organisations are not generally First Responders. Therefore, if you come across a potential victim, you must identify a First Responder who can assist.</p>
Need to know	<p>To discuss any concerns confidentially and to obtain advice contact the Modern Slavery Helpline Tel: 08000 121700.</p> <p>It is extremely rare that a person self identifies as a victim of trafficking. It is therefore important that advisers and support workers know the signs of exploitation.</p>

Pathways out of migrant destitution through a change in immigration status



ACCOMMODATION / FINANCIAL SUPPORT

The following options of accommodation / financial support should be considered as interim relief for homeless migrants. Obtaining access to accommodation creates a bit of space for migrants to explore their immigration options.

1. MoU 'Everyone in'

<p>What is it</p>	<p>Developed as a Covid response measure, the 'Everyone In' policy is designed to ensure that destitute migrants can be accommodated. The policy is implemented by way of a Memorandum of Understanding (MoU) between the Department for Communities and Department of Health and is delivered by NIHE.</p> <p>Under this MoU, the NIHE has powers to accommodate any migrant who cannot access public funds.</p> <p>This MoU is currently in place until 31 December 2021 and may be extended.</p>
<p>Who can apply</p>	<ul style="list-style-type: none"> • EEA nationals who have Pre Settled Status • EEA nationals who have not, for whatever reason, applied for EUSS • EEA nationals who arrived in NI from 1 Jan 2021 • Non EEA nationals subject to the No Recourse to Public Funds rule • Non EEA nationals who are visa overstayers • Refused asylum seekers
<p>How does it help</p>	<p>NIHE is required to provide 'suitable accommodation': for single adults this is likely to be hostel accommodation.</p> <p>NIHE also has powers to source and make arrangements for the provision of food to any person in receipt of MoU accommodation</p>
<p>How to apply</p>	<p>To access MoU support, a person needs to present as homeless to NIHE.</p> <p>If anyone is refused support under the MoU, ask the NIHE to put this the decision in writing. Please notify Housing Rights or Law Centre NI.</p>
<p>Need to know</p>	<p>NIHE may verify a person's immigration status with the Home Office. You should inform the person of this as they may not wish their details to be shared with the Home Office.</p>

Pathways out of migrant destitution through a change in immigration status



1. Support from Health and Social Care Trust

What is it	Trusts have wide ranging powers to provide social care and financial support to migrants who may otherwise be at a risk of a human rights breach (inhuman or degrading treatment) due to destitution. These are sometimes referred to as 'community care' powers.
Who can apply	<p>Social care is not a public fund, which means that NRPF migrants are not automatically excluded. Nonetheless, eligibility is complicated as there are number of immigration provisions that restrict entitlement.</p> <p>In general, a migrant may be eligible to apply if:</p> <ul style="list-style-type: none"> • S/he is destitute and at risk of a human rights breach; AND • Has an additional care need e.g. disability, poor health, victim of sexual violence, etc. <p>The Trust will conduct a human rights assessment to determine if it has any responsibility to intervene.</p>
How does it help	<p>Support offered under community care powers is likely to be minimal. There is no set amount or type of accommodation that the Trust must provide. For example, it could be hostel accommodation, B&B accommodation or private rental.</p> <p>In addition to providing accommodation, the Trust must ensure other essential living needs are met. This might be by providing cash, vouchers or food parcels.</p>
How to apply	<p>Where children are involved, contact the relevant Trust Gateway service immediately.</p> <p>For adults, contact the Trust's Adult Safeguarding Team.</p> <p>Outside of working hours, contact the Regional Emergency Social Work Service for adults and children ☎028 9504 9999.</p>
Need to know	<p>This is a complicated area of law and specialist advice should be sought. Law Centre NI can assist.</p> <p>Note that as part of the human rights assessment, the Trust will consider if a return home is viable.</p>

Pathways out of migrant destitution through a change in immigration status



2. Accommodation for immigration detainees, former prisoners and migrants at risk of human rights breach

What is it	The Home Office can provide a type of accommodation and financial support to a person who is subject to immigration bail known as “Schedule 10” support. This is similar to asylum accommodation but for people who have not applied for asylum.
Who can apply	<p>A person may be eligible if s/he is:</p> <ul style="list-style-type: none"> • subject to immigration bail (usually will have a BAIL 201 form); • has a bail condition that requires her to live at a specified address; • at risk of a human rights breach (i.e. inhuman or degrading situation) due to destitution <p>This is likely to be a person who is about to be released / has been released from custody or immigration detention and who has never applied for asylum (e.g. overstayer), or a person on immigration bail whose accommodation arrangements have broken down.</p> <p>Home Office guidance requires that accommodation will only be provided in ‘exceptional circumstances’. Realistically, therefore, only a small number of people will ever be accommodated under this provision.</p>
How does it help	This provides accommodation and financial support.
How to apply	An application for Schedule 10 support on human rights grounds needs to be made on form BAIL 409 and can be submitted through Migrant Help.
Need to know	For more information see the Home Office guidance on immigration bail and also the Asylum Support Appeals Project (ASAP)'s factsheet on support for people on immigration bail .

Pathways out of migrant destitution through a change in immigration status



3. TEO Crisis Fund support

What is it	The TEO Crisis Fund is designed to assist destitute migrants who have come to Northern Ireland and may have become vulnerable due to a range of circumstances. The fund is administered by the Red Cross, which works with partner organisations across NI.
Who can apply	Any migrant who is experiencing financial hardship. This could include: <ul style="list-style-type: none"> • Vulnerable migrants including EEA / non EEA migrant • Destitute asylum seekers and refugees • Persons who have been subjected to trafficking and exploitation • Other identifiable vulnerable groups in consultation with Red Cross (e.g. Roma) • Those who have lost employment • Those facing homelessness • Experiencing delays or disruption to benefit payments, etc. • Facing homelessness, etc.
How does it help	Through the partner organisation, the migrant can receive a one-off payment or a series of payments. The amount payable and type of support will depend on the individual circumstances. Support might include money for essential living items, short-term accommodation, essential travel costs, essential medical costs, fuel/heating, etc.
How to apply	Contact the Red Cross to find out which organisation you should link in with for an assessment.
Need to know	The intention of the Crisis Fund is to “bridge” destitution or to provide support to people who can have the advice of a professional while the cause of their destitution is addressed, rather than prolonging someone in circumstances that will not change after the support of the Crisis Fund ends.

Pathways out of migrant destitution through a change in immigration status



RETURNING TO HOME COUNTRY

2. Voluntary Returns Service

This may be a practical option in some circumstances.

What is it	<p>The Home Office runs a Voluntary Returns Service (“VRS”) whereby migrants can receive assistance to return to their home country.</p> <p>VRS can arrange and pay for flights home. It can also help obtain the necessary travel documents.</p>
Who can apply	<p>Any migrant who does not have immigration status in the UK can apply to this service. As of 1 July 2021, this can include EEA nationals.</p>
How does it help	<p>For migrants who have family / support networks back home and who find the cost of travel prohibitive, the Voluntary Returns Service can be a very useful option.</p> <p>Depending on the circumstances of the applicant and their immigration history, s/he may be eligible for up to £3000 of financial support which is paid in their home country.</p>
How to apply	<p>Applications can be made by phone 0300 004 0202 Mon-Fri 9am-5pm or on line at any time: www.gov.uk/return-home-voluntarily</p>
Need to know	<p>Potential applicants should be aware that there are implications of making an application to VRS. For example, an application to VRS is likely to result in any immigration application (such as an ongoing asylum application) being withdrawn. A person who accepts assistance through VRS will be subject to a ban on re-entering the UK and will be required to repay any financial assistance if they return.</p> <p>Remember that although returning home may be a good option for some migrants, the decision to return must be made with informed consent. No person should be pressured to return home to a place where they would be at risk.</p>

Pathways out of migrant destitution through a change in immigration status



KEY CONTACTS

There are a number of organisations that may be able to assist. This includes the following:

Organisation	Issue	Contact details
Advice NI	EU Settlement Scheme and welfare benefits	0800 138 6545 Text EUSS to 66644
Children's Law Centre	Areas of law affecting children including immigration (and separated children), welfare benefits, etc.	028 9024 5704
Domestic & Sexual Abuse Helpline	Domestic violence and sexual abuse	0808 802 1414
Gateway service	Destitute migrant sleeping rough / particularly vulnerable (inc. children)	Each Trust has different number. See: Trust Gateway service
Home Office Voluntary Returns	Assistance making a voluntary return to home country	0300 004 0202
Housing Rights	Housing, homelessness (including MoU refusals)	028 9024 5640
Law Centre NI	Immigration advice (all topics) Social security (all topics) Health and social care for migrants	028 9024 4401
Migrant Help	Applications for asylum support	0808 8010 503
Modern Slavery Helpline	Information and guidance about modern slavery and human trafficking	08000 121700
NIHE Homelessness Line	Applications for accommodation under the MoU Everyone In policy	03448 920 908
Red Cross	TEO Crisis Fund	028 90 323055
Regional Emergency Social Work Service (out of hours)	Destitute migrant sleeping rough / particularly vulnerable (inc. children)	028 9504 999
Stronger Together EUSS	EU Settlement Scheme	028 8775 0211

Pathways out of migrant destitution through a change in immigration status



Disclaimer

Although every effort is made to ensure the information in Law Centre publications is accurate, we cannot be held liable for any inaccuracies or their consequences.

The information contained within this document should not be treated as a complete and authoritative statement of the law.

Law Centre NI only operates within Northern Ireland and the information in this document describes the state of the law in Northern Ireland only.

When reading Law Centre documents, please pay attention to their date of publication, as legislation may have changed since they were published

© Law Centre NI 2021