



**Rough sleeping as a ground for refusal or cancellation of
leave to enter or remain in the UK**

Report for the Strategic Legal Fund

Benjamin Morgan and Eve Dickson

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Foreword

We are grateful to the Strategic Legal Fund (SLF) for funding this research. The SLF was established as a pilot by The Diana, Princess of Wales Memorial Fund in October 2011, delivered in partnership with Trust for London and MigrationWork CIC. Since April 2017 the SLF has been managed by the Immigration Law Practitioners' Association (ILPA) and funded by Esmée Fairbairn Foundation, Unbound Philanthropy, Joseph Rowntree Charitable Trust, Trust for London and Paul Hamlyn Foundation. The SLF funds strategic legal work in areas of law that affects people disadvantaged or discriminated against because of their migration status. Strategic legal work is defined as work where the impact is likely to go beyond an individual case, and to result in changes to law, policy or practice that will benefit a wider group of people.

We would also like to express our gratitude to all of the individuals and organisations who participated in this research.

Executive Summary

In October 2020 the Home Office announced changes to the Immigration Rules which made rough sleeping a ground for refusal or cancellation of non-UK nationals' leave to enter or remain in the UK. These changes came into force on 1 December 2020.

This report analyses in detail the new Rough Sleeping Rule and its potential effects. It is based on research conducted between October 2020 and February 2021, including: a survey of organisations supporting homeless non-UK nationals; Freedom of Information Act (FOIA) requests; semi-structured interviews with policy experts, homelessness and human-rights practitioners and homeless non-UK nationals; and desk-based research and analysis.

As of the date on which this report was finalised, the government had not outlined the rationale behind the Rough Sleeping Rule, nor had guidance for decision-makers on the implementation of the Rule been published.

A number of categories of non-UK national could be affected by the Rough Sleeping Rule. These include: victims of trafficking and modern slavery; people on ancestry visas; non-UK nationals making applications to remain in the UK on the basis of their human rights outside the Immigration Rules; international students; people on domestic worker visas; EEA citizens resident in the UK who fail to resolve their status before the EU Settlement Scheme deadline; and new arrivals from the EEA after 31 December 2020. Some categories of non-UK national, including people with indefinite leave to remain, most asylum seekers and EEA citizens and their family members eligible to apply to the EU Settlement Scheme, are exempt from the Rough Sleeping Rule.

Statements made by the government in Parliament and in the media, and previous policies aimed at the administrative removal of non-UK national rough sleepers, suggest that the principal intended targets of the Rule are EEA nationals sleeping rough in the UK after Brexit.

Non-UK-national rough sleeping is a serious social-policy issue. Key drivers include: high accommodation costs; the proliferation of precarious employment; the exclusion of many non-UK nationals from social assistance; and a lack of specialist advice and support provision for those to whom the no recourse to public funds (NRPF) condition applies. The extremely limited statutory safety-net support available to some migrants with NRPF (e.g. under Section 17 of the Children Act 1989, Care Act 2014) is in practice often difficult or impossible to access. The coronavirus pandemic has contributed to an increase in destitution, with many non-UK nationals struggling to access appropriate support through the Covid-19 homelessness response.

Our research findings indicate that the Rough Sleeping Rule will not help to solve the problem of non-UK-national rough sleeping. On the contrary, the Rule may exacerbate rough sleeping among this group, including by making non-UK nationals less willing to seek or accept support that could resolve their rough sleeping. Previous policies aimed at the 'administrative removal' of street-homeless non-UK nationals have severely compromised migrant rough sleepers' trust in support services.

Finally, our research suggests that the Rough Sleeping Rule may breach the Equality Act 2010 by discriminating against people with protected characteristics.

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1 Introduction

1.1 The Rough Sleeping Rule

On 22 October 2020 the Home Office laid before Parliament a statement of changes to the Immigration Rules (Home Office 2020a). An explanatory memorandum, published simultaneously, explained the changes as follows:

“This instrument amends the Immigration Rules that are used to regulate people’s entry to and stay in the United Kingdom. These amendments deliver the Future Points-Based Immigration System and represent a further step in realising the Home Office [sic] commitment to simplifying the rules, implementing the recommendations of the Law Commission to ensure we provide greater clarity to migrants, employers and all other users of the rules.”

(Home Office 2020b)

This report is concerned with the potential impact of Paragraphs 9.21.1 and 9.21.2 of the changes to the Immigration Rules. These paragraphs introduce a new discretionary ground for refusal or cancellation of permission to stay in the UK on the basis of rough sleeping.

For concision, this ground is referred to throughout this report as the ‘Rough Sleeping Rule’ or ‘the Rule’.

In accordance with the October 2020 statement of changes, the Rough Sleeping Rule took effect at 9am on 1 December 2020.

As of the date on which this report was finalised, no guidance for caseworkers had been issued in respect of the Rough Sleeping Rule. Nor had the government confirmed when such guidance would be published. The Home Office has indicated that it will not rely on the Rule to refuse or cancel leave to remain on the basis of rough sleeping until guidance for caseworkers has been published (Home Office 2020c).

A number of categories of non-UK national are exempted from the Rough Sleeping Rule. These are listed in section 4.2 of this report.

1.2 Non UK-national rough sleeping: statistics

Street homelessness among non-UK nationals is a serious social policy issue. Non-UK nationals are significantly overrepresented among rough sleepers. According to the government’s rough sleeping statistics, in 2019 26% of rough sleepers in England were non-UK nationals (Ministry of Housing, Communities and Local Government 2020). Of the total number of people found sleeping rough (ibid):

- 22% were EU nationals;
- 4% were from outside the UK and the EU;
- 10% were of unknown nationality.

In London around half of those estimated to be sleeping rough were from outside the UK (ibid):

- 42% were EU nationals;
- 7% were from outside the UK and the EU;
- 18% were of unknown nationality.

Government statistics are likely to significantly underestimate the number of people sleeping rough (see, for example, Booth 2020a). The government uses a ‘snapshot’ method that captures the number of people encountered sleeping rough in each local-authority area during a single night between 1 October and 30 November each year. (Different local authorities may conduct their ‘street count’ on different nights during this period.) These figures only include people observed bedding down for the night outside. They may fail to capture people who sleep rough intermittently and those rough sleepers who conceal themselves. During the first UK Covid-19 ‘lockdown’, the government directed local authorities to accommodate all rough sleepers regardless of immigration status. The number of rough sleepers so accommodated far exceeded the number recorded as rough sleeping in official government statistics (National Audit Office 2021).

Most non UK-national rough sleeping takes place in Greater London. Detailed data on the rough-sleeping population in London is collected through the Combined Homelessness and Information Network (CHAIN), a multi-agency database recording information about rough sleepers in London. CHAIN is commissioned and funded by the Greater London Authority (GLA) and managed by the charity and housing association St Mungo’s. For the purposes of CHAIN, ‘people are counted as having been seen rough sleeping if they have been encountered by a commissioned outreach worker bedded down on the street or in other open spaces or locations not designed for habitation, such as doorways, stairwells, parks or derelict buildings’ (GLA 2020a).

Appendix A of this report presents data from CHAIN on non-UK nationals encountered sleeping rough over the last five years. The data indicates that non-UK nationals make up a significant proportion of the rough-sleeping population in London and are overrepresented among rough sleepers. Certain nationality groups are disproportionately encountered rough sleeping in London. Between 2015 and 2020, Romanian nationals made up the largest number of non-UK nationals sleeping rough. Polish nationals were consistently the second largest group. In 2019/20, Indian nationals represented the third largest group of non-UK nationals sleeping rough.

Data on the immigration status of non-UK nationals seen sleeping rough is also collected through CHAIN. Such data is likely to be unreliable because (a) individuals are often fearful of disclosing status to outreach services; and (b) outreach workers recording on CHAIN are not trained in determining immigration status. The GLA notes that ‘[d]ue to the difficulties involved in obtaining this information from rough sleepers, immigration status data should be treated with caution’ (GLA 2020a). As such, we do not rely on such data in our report.

1.3 Non-UK-national rough sleeping: drivers

Rough sleeping is a complex issue with a number of intersecting drivers, though poverty has been cited as ‘the most important driver of homelessness in all its forms’ (Bramley 2017).

A shortage of affordable housing, combined with insecure private sector tenancies, cuts to housing allowances and ‘exclusionary allocations practices’, has contributed to high levels of homelessness, including rough sleeping, in London and the South East of England (Fitzpatrick et al. 2019). Welfare reform, including the capping of benefits and the introduction of Universal Credit, has contributed to destitution that may result in individuals being forced to sleep rough (GLA 2019b).

The proliferation of precarious, low paid and temporary forms of employment (including ‘zero hours contracts’) as a result of fragmentation and deregulation in the UK labour market and the failure of wages to keep pace with living costs has contributed to homelessness, including the growing problem of ‘in work homelessness’ (Jones et al. 2019).

Economic ‘austerity’ measures, including cuts to welfare expenditure and reduced local-authority budgets, have also been associated with increased homelessness (Loopstra et al. 2016). Inadequacies in social care provision linked to service reduction appear to have disproportionately affected people at risk of homelessness (Cameron et al., 2016). Services for those experiencing mental health difficulties (Cummings 2018) and substance-misuse issues (Rhodes 2018) have also experienced a significant reduction in funding in recent years.

During the Covid-19 pandemic, the number of people experiencing poverty has increased significantly (Stroud 2020), with a large number of people being made homeless despite a ban on evictions (Marsh and Walker 2020a). Social-distancing measures have contributed to a reduction in the number of shelter spaces available for rough sleepers (Marsh and Walker 2020b).

Research indicates that exclusion from welfare assistance is a significant factor contributing to rough sleeping among non-UK nationals (see, for example, Crisis 2018). The majority of non-UK nationals living in the UK who require permission to be in the UK are subject to a ‘no recourse to public funds’ (NRPF) condition barring them from access to most mainstream welfare benefits as well as statutory homelessness assistance and local authority housing allocations (NRPF Network 2021).

EEA nationals have not previously been subject to the NRPF condition. However, many EEA nationals living in the UK, including those who do not have Settled Status and cannot show that they are ‘economically active’, have limited or no entitlement to public funds. Since 1 January 2021 new arrivals from the EEA have been subject to the NRPF condition (ibid.).

The government does not collect data on the number of people rough sleeping in the UK who are subject to an NRPF condition. However, there is clear evidence of the link between NRPF status and rough sleeping. Restrictions on access to social assistance have contributed to homelessness among non-UK nationals, including families with children (Dexter et al. 2016). Meanwhile, ‘hostile environment’ policies introduced through the 2014 and 2016 Immigration

Acts, have ‘fostered racism and discrimination [and] forc[ed] many people into destitution’ (Qureshi et al. 2020).

EU citizens who are precariously situated in the UK labour market and cannot access welfare support due to immigration status may be forced to sleep rough as a result of a single event such as loss of employment or accommodation (Garapich 2008). Increasing restrictions on EU nationals’ entitlement to social assistance, including the 2014 withdrawal of EU jobseekers’ right to Housing Benefit, have contributed to street homelessness among this group. Other factors contributing to EU-national rough sleeping include labour exploitation, anti-immigrant racism and high housing costs (Drozdowicz 2018).

Two additional drivers of non-UK-national rough sleeping are: insufficient or inadequate support provision, including a shortage of specialist advice and accommodation services for non-UK-national rough sleepers (Dickson et al. 2020); and a lack of trauma-informed support for survivors of trauma and violence (Hopper et al. 2010).

‘Gatekeeping’ by statutory agencies, including local authorities, prevents many homeless non-UK nationals from accessing support to which they are entitled. In some circumstances, non-UK nationals subject to the NRPF condition may be entitled to extremely limited forms of statutory safety-net support. However, such support is difficult to access. Concerns have been expressed about local authorities’ use of unlawful practices to prevent homeless migrants from accessing this support. Such practices include threats to share information with the Home Office and to take children away from parents (Dexter et al. 2016; Dickson 2019; Dennler 2018); and the wrongful refusal of support to adults with NRPF seeking support under the Care Act 2014, families with children seeking support under section 17 of the Children Act 1989, and non-UK nationals seeking accommodation through the Covid-19 homelessness response (Dickson et al. 2020).

Where non-UK-nationals may be entitled to access statutory safety-net support, they are often reluctant to do so due to fear of authorities. Information sharing between local authorities, homelessness outreach services, and Home Office immigration-enforcement teams has undermined non-UK-national rough sleepers’ trust in support services (Morgan 2020a). This was a key concern for respondents to our research survey (see 4.3), with a number of organisations reporting that service users were wary of approaching statutory agencies and commissioned services for fear of negative consequences.

Additionally, Home Office immigration officers (known as ‘On Site Immigration Officials’ (OSIOs)) are ‘embedded’ in 11 local authorities across England. These include the London boroughs of Barking and Dagenham, Barnet, Bexley, Enfield, Greenwich, Hillingdon, and Sutton, as well as Essex, Slough, Surrey, and Thurrock councils.¹ Most OSIOs are embedded in social care departments that encounter homeless adults and families with NRPF. However, in some cases OSIOs also operate within housing and other council departments.² Legal and policy experts have raised concerns about the effect of the presence of OSIOs on the ability of

¹ Information obtained through a Freedom of Information request to the Home Office (see Appendix B).

² For example, in the London Boroughs of Bexley and Hillingdon, OSIOs are used by housing departments as well as No Recourse to Public Funds teams.

destitute migrants to access statutory support entitlements (Siddons and MacIntyre 2018). Several local authorities have removed OSIOs in light of these concerns (Busby 2019).

2 Research methodology

This report is based on a combination of:

- Freedom of Information Act requests and responses and analysis of policy documents in the public domain;
- Analysis of data obtained through a survey of organisations engaged with non-UK-national homelessness;
- Semi-structured interviews with policy experts, frontline practitioners and non-UK nationals at risk of rough sleeping;
- Desk-based research and analysis.

2.1 FOIA responses

FOIA requests were submitted to the Home Office in November 2020.

Requests were made for:

- Documents and correspondence relating to the decision to introduce the Rough Sleeping Rule, including the Home Office's aims in, or reasons for, introducing it;
- Any documents, correspondence, analysis, and/or research undertaken with respect to possible alternatives, e.g. the commissioning of immigration advice/specialised accommodation;
- Copies of any human rights assessments, impact assessments, Public Sector Equality Duty (PSED) assessments, published or unpublished consultations undertaken with respect to the Rule;
- Details of any legal advice sought or received by the government with respect to the Rule;
- Documents or correspondence relating to any agreements or discussions of potential agreements with other stakeholders around information sharing for the purposes of identifying non-UK nationals sleeping rough (e.g. data protection protocols);
- Instructions or other guidance for decision makers (whether in draft form or otherwise) on how to apply the Rule;
- Information about 'On-Site Immigration Officials' (OSIOs) in local authorities, including which local authorities OSIOs were embedded in and what departments they provided services.

As of the date on which this report was finalised, the Home Office had only responded to the request for information about OSIOs. The Home Office has failed to comply with statutory deadlines for the disclosure of the other information requested.

The FOI requests and responses can be found at Appendix B.

2.2 NGO survey

A survey of third-sector organisations was conducted through snowball sampling using existing networks and mailing lists in the migrant-support, homelessness and human-rights sectors. The aim of the survey was to solicit organisations' perspectives on:

- Factors contributing to non-UK-national rough sleeping;
- The availability of support to non-UK nationals sleeping rough or at risk of sleeping rough; and
- The potential impact of the Rough Sleeping Rule.

The survey also sought anonymised case studies of non-UK nationals who could be affected by the Rule.

40 organisations responded to the survey. Follow-up contact for further information and case studies was made with 7 organisations.

2.3 Semi-structured interviews

Semi-structured interviews were conducted with policy experts, 'frontline' practitioners and non-UK nationals experiencing or at risk of rough sleeping.

2.3.1 Policy experts and 'frontline' practitioners

Semi-structured interviews were conducted with ten individuals representing six organisations with expertise in non-UK-national rough sleeping. Interviewees were selected on the basis of an assessment of their breadth and depth of expertise and experience and their ability to speak to the potential impact of Rough Sleeping Rule.

The profiles of interviewees are reflected in the following table:

Profile of interviewee	Relevant expertise
Policy manager from national membership organisation for UK homelessness organisations	Prominent publisher of research, policy and practice guidance around UK homelessness; 750 member organisations provide direct support to rough sleepers
Coordinator of specialist LGBTIQ+ shelter and community centre	Shelter and community centre support a large number of homeless LGBTIQ+ non-UK nationals
Welfare specialist from migrant advice agency, London	Provide specialist advice to destitute non-UK nationals around welfare, housing, health and community care
CEO and two staff members from national Roma organisation	Extensive experience of research, advocacy and service-provision around needs of Roma refugees and migrants in UK

Coordinator of national advocacy group representing non-UK-national students	Extensive experience of policy advocacy around issues faced by international students in the UK
Research and practice leads from regional migrant-support charity	Provide advice and support to a large number of vulnerable non-UK nationals; conduct research into health and welfare issues affecting homeless refugees and migrants

Interviewees were asked about: the work their organisation does and their role; the proportion of their service-users experiencing or at risk of rough sleeping; the drivers of rough sleeping among service-users and the availability of support; and their views on the potential impact of the Rough Sleeping Rule. The interview schedule forming the basis of these interviews can be found at Appendix C.

Expert evidence was also solicited and received in the form of a legal note by an expert on statelessness (see Appendix D).

2.3.2 Potentially affected individuals

Four individuals who had experienced or were at risk of rough sleeping and belonging to categories of non-UK national not exempted from the Rough Sleeping Rule were interviewed. These included: three people who were applying for or had been granted leave to remain on Article 8 (family/private life) grounds outside the Immigration Rules; and one person on an ancestry visa.

Interviewees were asked about: their experiences of rough sleeping or being at risk of rough sleeping; what help is or was available to them; and what role their immigration status played. Interviewees were also asked for their views on the impact of the Rough Sleeping Rule on their ability and willingness to seek support. The interview schedule used can be found at Appendix E.

Interviewees were offered a £10 supermarket voucher to thank them for their participation in the research.

2.4 Note on case studies

The case studies cited in this report are drawn from the NGO survey and semi-structured interviews (see above). In all cases they refer to real individuals and scenarios as reported by research participants. Names have been changed and some details omitted to protect the anonymity of the individuals concerned.

2.5 Desk-based research

Desk-based research was conducted between October 2020 and February 2021. A review of academic, legal and policy literature on non-UK national rough sleeping was conducted via Google Scholar and LexisNexis databases. Rough sleeping statistics from the UK government and the Greater London Authority’s CHAIN database were examined. The October 2020

statement of changes to the Immigration Rules and its explanatory memorandum were analysed along with other relevant policy documents. In addition, a search on Hansard was conducted for relevant search-terms (e.g., 'rough sleeping', 'non-UK national', 'no recourse to public funds') for the period October 2020 - February 2021. Parliamentary questions and statements related to the Rough Sleeping Rule were then analysed along with media articles related to the changes. The latter were identified through internet searching and LexisNexis.

3 Policy background and rationale

Paragraphs 9.21.1 to 9.21.2 of the amended Immigration Rules state the following:

“Rough sleeping in the UK

9.21.1. Permission to stay may be refused where the decision maker is satisfied that a person has been rough sleeping in the UK.

9.21.2. Where the decision maker is satisfied that a person has been rough sleeping in the UK any permission held by the person may be cancelled.”

(Home Office 2020a)

The amended Immigration Rules define ‘rough sleeping’ as follows:

“Rough sleeping” means sleeping, or bedding down, in the open air (for example on the street or in doorways) or in buildings or other places not designed for habitation (for example sheds, car parks or stations).”

(ibid.)

Apart from these paragraphs, and the information about exemptions discussed in section 4.1 of this report, very little information has been published by the government in relation to the Rough Sleeping Rule. As of the date on which this report was finalised, the rationale behind the introduction of the Rule had not been outlined and no guidance for implementation had been published.

As of the date on which this report was finalised, the Home Office had failed to disclose information requested under the Freedom of Information Act 2000 relating to the department’s aims in, or reasons for, introducing the Rough Sleeping Rule, or any consultations or impact assessments conducted with respect to it. The Home Office has failed to comply with statutory deadlines for the disclosure of this information (see Appendix B).

This section therefore relies on other information in the public domain, including: responses to parliamentary questions; government media statements; and published correspondence between the government and advocacy and professional organisations.

3.1 Rationale and application

3.1.1 Rationale

As of the date on which this report was finalised, the government had not announced any rationale for the introduction of the Rough Sleeping Rule.

3.1.2 Consultation with charities and local authorities

It is unclear what, if any, consultation with charities or local authorities has taken place with respect to the new Rough Sleeping Rule. On 9 November 2020, Helen Hayes MP tabled the following parliamentary question:

“To ask the Secretary of State for the Home Department, what discussions she has had with (a) charities and (b) local authorities on her Department's proposals to deport foreign national rough sleeper after the transition period.”

Responding for the government, Chris Philp stated:

“The new Immigration Rules, which make provision for the refusal or cancellation of permission to stay in the UK on the basis of rough sleeping, will apply to non-EEA nationals from 1 December 2020 and to newly arriving EEA citizens from 1 January 2021 and will only be used after all support is rejected.

The Home Office and the Ministry for Housing, Communities and Local Government are encouraging local authorities and approved charities to resolve the immigration status of rough sleepers and unlock access to any benefits and entitlements that rough sleepers may be eligible for.”

(HC Debs 9 Nov 2020)

3.2 Guidance for decision makers

As of the date on which this report was finalised, no detailed indication had been given of what guidance will be provided to immigration caseworkers with respect to the implementation of the Rough Sleeping Rule.

3.3 Previous policy approaches to non-UK-national rough sleepers

In May 2016 the Home Office introduced a policy interpreting rough sleeping as an ‘abuse’ (later amended to ‘misuse’) of EU freedom of movement rights (Evans 2020). Home Office Immigration Compliance and Enforcement (ICE) teams worked with local authorities and some homelessness charities to detain and ‘administratively remove’ EEA nationals sleeping rough in the UK (Corporate Watch 2017). The policy has been described as ‘part of a wider and deliberately ‘hostile environment’ for EU citizens [living in the UK]’ (Evans 2020).

In December 2017 the ‘abuse/misuse of rights’ policy was ruled unlawful in the High Court as a result of a judicial review brought on behalf of three homeless EU citizens. Mrs. Justice Lang DBE found that rough sleeping could not be considered an ‘abuse’ or ‘misuse’ of free-movement rights and that the government had both unlawfully discriminated against EU rough sleepers and engaged in the unlawful ‘systematic verification’ of their residence rights (R (Gureckis vs SSHD) 2017).

EU citizens targeted under the ‘abuse/misuse of rights’ policy were often not made aware of appeal rights (Cooper 2017). In many cases inadequate consideration appears to have been given by authorities to the possible vulnerability (e.g. mental health issues) of rough sleepers targeted for removal by ICE teams (Demars 2017). Proportionality guidance directing decision makers to give consideration to factors including length of time spent rough sleeping and the presence or absence of ‘anti social behaviour’ or ‘criminality’ (Evans 2020) were frequently ignored in practice.

The social impact of the unlawful ‘abuse/misuse of rights’ policy appears to have been considerable and is likely to have been underreported (Greenfields and Dagilytė, 2018). Individuals removed or threatened with removal experienced suffering, distress, and loss of income as a result of the policy, which in many cases resulted in unlawful detention and the confiscation of identity documents (see, for example, Muntean and Olariu 2017; Morgan 2020b). The UK government has paid significant sums in damages (including aggravated damages) to affected individuals (Ironmonger 2018).

In 2019, concerns were raised by advocacy organisations and local authorities in relation to data-sharing arrangements for the Home Office’s Rough Sleeping Support Service (RSSS) after information obtained through an FOIA request indicated that the service would involve local authorities and charities being asked once again to share information for the purposes of immigration enforcement (Townsend, 2019). A number of local authorities have indicated that they will not participate in the RSSS until their concerns about data sharing arrangements have been addressed (Modhin 2019).

One of our interviewees, a policy manager at a national membership organisation for homelessness organisations, stated that previous policies targeting rough sleepers for immigration enforcement action had ‘hugely damaged trust’, including in relation to ‘[homeless] people’s willingness to engage with services [including outreach teams]’. This interviewee stated their belief that these effects would be ‘long lasting’.

4 Potential impact of the Rough Sleeping Rule

4.1 Introduction

This section of our report analyses the potential impact of the Rough Sleeping Rule. We set out which categories of non-UK national are likely to be most affected, consider the Rule's implications for homeless people with protected characteristics and detail the views of key homelessness stakeholders with respect to the Rule's potential impact.

4.1.1 Evidence base

In analysing the potential impact of the Rough Sleeping Rule we draw on a variety of data sources, including: (a) semi-structured interviews with policy experts, homelessness practitioners and individuals at risk of homelessness; (b) a survey of 40 organisations supporting homeless non-UK nationals; and (c) analysis of public-domain data relating to the views of UK local authorities, Members of Parliament and non-governmental organisations.

Participants in semi-structured interviews included (see section 2 for full list):

- The policy manager at a nationwide membership organisation for homelessness organisations. The membership organisation represents over 750 organisations in the UK and is a prominent publisher of good-practice guidance, resources and policy research on homelessness in the UK.
- The CEO and policy manager of the UK's largest organisation representing non-UK nationals of Roma origin. This organisation has provided advice and advocacy support to Roma people in the UK for more than twenty years. It supported over 4000 Roma migrants in 2019/20.
- A welfare-rights specialist from an advice organisation supporting vulnerable non-UK nationals around immigration, housing, welfare, healthcare and community care. This organisation supported more than 900 individuals in 2019/20.
- The director of the UK's only specialist homelessness shelter and community centre for LGBTIQ+ people.
- The research and practice leads from a regional migrant-support organisation operating in several locations in the East of England. Both research leads are affiliated to a migration research centre at a major UK university and have published extensively on issues relating to non-UK-national homelessness.

Respondents to the NGO survey came from across the migrants' rights, human rights, and homelessness sectors (see 4.3). Semi-structured interviews were also conducted with four non-UK nationals at risk of rough sleeping.

4.1.2 Summary of potential impact

Our research indicates that the Rough Sleeping Rule is likely to negatively impact efforts to reduce non-UK-national rough sleeping. It also supports the view that the Rule is likely to cause social harm and may lead to discrimination under the Equality Act 2010.

Despite the exemption of some categories of non-UK national, the Rule could be applied to a broad range of people, including vulnerable groups (see 4.2.1-4.2.9). The extremely broad terms in which ‘rough sleeping’ is defined for the purposes of the Rule (see Introduction) means that individuals who are not ‘rough sleeping’ in any common understanding of the term are likely to be caught by the Rule’s provisions.

Analysis of our NGO survey (4.2) indicates that sufficient support was not available to non-UK nationals at risk of rough sleeping before the Covid-19 pandemic, in part due to the legal position of many non-UK nationals with respect to eligibility for social assistance. The pandemic has made destitution among non-UK nationals more likely. A significant proportion of non-UK national rough sleepers have not been able to access adequate support through the Covid-19 homelessness response.

Finally, our research indicates that the Rough Sleeping Rule is likely to deepen some non-UK nationals’ existing mistrust of homelessness services and could have a ‘chilling effect’ in terms of rough sleepers’ willingness to access advice and support that could help them resolve their homelessness.

4.1.3 Stakeholders in their own words

In general, stakeholders expressed alarm and disappointment at the announcement of the Rough Sleeping Rule. One interviewee stated their belief that the Rule would have a ‘tremendous’ negative impact on homelessness organisations’ ability to support non-UK-national rough sleepers and others at risk of rough sleeping.

Another interviewee – a policy expert working for a national membership organisation for homelessness organisations – stated that the Rule had caused ‘panic in the sector [...] a massive outcry’. This interviewee stated that the membership organisations’ members were ‘confused about how [the Rule] could possibly work’, in part as a result of an ‘information vacuum’.

In relation to the government’s statement that the Rule would only be applied in cases where support was being refused (see section 3), a third interviewee stated their belief that the Rough Sleeping Rule was likely to bring about something akin to a ‘Catch-22’ scenario. The interviewee explained that the only ‘support’ available to many homeless non-UK-national rough sleepers was ‘international reconnection’ – that is, financial support to assist them to return to their country of origin. Rough sleepers would therefore effectively be faced with a ‘non-choice’ between returning ‘voluntarily’ or being compelled to return.

A second interviewee, from a regional advice charity supporting a large number of homeless EEA nationals, noted that ‘[o]ften our clients are offered only a flight home [...] a ‘reconnection’ service [...] as their only option of support.’

The interviewee from the national membership organisation for homelessness organisations echoed these concerns, articulating the view that ‘refusal to accept international reconnection will be interpreted as refusal to engage [and therefore potentially lead to an enforced removal scenario]’.

The same interviewee expressed concern that the Rule would be a ‘deterrent for people to engage with support services of any kind’. They feared it would have a ‘ripple effect on wider [homeless and migrant] communities’ in terms of fostering mistrust. The interviewee stated that the Rule appeared to ‘go [...] against decades of good practice [...] A carrot [not a stick] is what makes people engage with services [...] When people don’t engage it is [often] because services are not fit for purpose or don’t work for them’.

The same interviewee remarked that the exemption of some non-UK nationals from the Rule would be unlikely to mitigate its negative impact in terms of trust in statutory and commissioned services: ‘When you’ve got [...] communit[ies] pushed out of the system and rough sleeping, people will not make the distinction about which kind of immigration status is being targeted’.

4.2 Who is affected?

People applying for or granted leave to remain in or enter the UK on certain bases are exempted from the new Rough Sleeping Rule. Below we present a non-exhaustive list of exemptions.

Those exempted include people who have been granted, or who are applying for, leave to remain or enter under:

- (1) Appendix FM (e.g. as a family member of a British or settled national);
- (2) Paragraph 276 ADE to 276 DH (private life in the UK for long residence);
- (3) Appendix Armed Forces (as a former member of the UK Armed Forces);
- (4) Appendix EU and Appendix EU (Family Permit) (as an EEA national who has settled or pre-settled status under free movement laws);
- (5) Paragraph 159I of Part 5 (leave to remain as a domestic worker who is the victim of slavery or human trafficking);
- (6) Part 11 (asylum);
- (7) Entry clearance or permission to stay by virtue of the ECAA Association Agreement or ECAA Extension of Stay (self-employed Turkish business persons);
- (8) Appendix S2 healthcare visitors;
- (9) Appendix Service Providers from Switzerland.

The Rule will apply to non-UK nationals who do not fall into any of the above categories.

Below we look in detail at some categories of non-UK national who may be affected by the Rough Sleeping Rule, drawing on evidence and case-studies gathered through our research.

4.2.1 Victims of trafficking and modern slavery

It is common for victims of trafficking and modern slavery to experience street homelessness, including after fleeing exploitation. Shortcomings in the UK’s National Referral Mechanism (NRM) have been shown to contribute to this risk (Nicholson et al. 2020). Homeless people are

also at significant risk of becoming victims of trafficking and modern slavery (see, for example, Cockbain and Brayley-Morris 2017).

A recent report by Focus on Labour Exploitation (FLEX) found that victims of trafficking are regularly detained under immigration powers in the UK, with some being removed from the country before they have been able to access assistance to which they are legally entitled (Ishibashi 2019).

On 1 December 2020 over 140 non-governmental organisations, trade unions, lawyers and local authorities wrote to ministers urging them to revoke the Rough Sleeping Rule. The letter stated that the Rule would have serious consequences for victims of modern slavery as well as putting the wider homeless population at increased risk of exploitation (Bulman 2020a). Signatories to the letter called the Rule ‘unfair to rough sleepers, and counter-productive to the UK’s commitment to tackle modern slavery’. It was further noted that the Rule would be likely to make it ‘harder for people who experience exploitation to come forward and seek support’, and that ‘[by] making the escape route to the streets unlawful and risky, the Home Office is playing right into the hands of exploiters’ (Ishibashi and Sereni 2020).

One of our research interviewees noted that the Rough Sleeping Rule could deter victims of trafficking or modern slavery from fleeing their exploiters. In the opinion of the interviewee, this would ‘create an additional vulnerability’ for victims and ‘reinforce exploitative dynamic[s]’.

Case Study: Armando

Armando has a Tier 2 work visa as a carer/nurse. He is a victim of human trafficking. He recently had to sleep on the streets for two months because he did not know where to turn for help. Eventually, he was able to access support from a specialist organisation who helped him to get access to the Jobcentre. Armando is now back in employment in a care home.

4.2.2 International Students

The Rough Sleeping Rule will apply to individuals on student visas in the UK.

Holders of student visas are subject to the NRPF condition. They are therefore excluded from access to most mainstream welfare benefits and statutory homelessness assistance.

It has been widely reported that many international students in the UK are experiencing hardship during the Covid-19 pandemic. In May 2020, the Guardian reported that large numbers of Indian students had little or nothing to eat as a result of the pandemic (Fazackerley 2020). A survey of 124 Tier 4 international students conducted by Migrants’ Rights Network and Unis Resist Border Controls in June 2020 found that 56% of respondents believed they were destitute or at risk of becoming destitute. Many respondents who had previously been in employment had been made redundant or lost their jobs. Almost half (47%) had been forced into debt (Migrants’ Rights Network and Unis Resist Border Controls 2020).

One of our interviewees, from an organisation working with international students, told us that universities were not providing support to international students experiencing hardship during

the pandemic. This was the case even where students were at risk of homelessness. In many cases, students were struggling to pay tuition fees. This interviewee stated that there was a significant issue of ‘hidden homelessness’ amongst international students and that Covid-19 had exacerbated pre-existing problems such as being unable to afford rent and sofa-surfing. The same interviewee told us that students from Global South countries were particularly at risk of experiencing economic hardship and homelessness. Finally, the same interviewee expressed the view that the Rough Sleeping Rule would be ‘catastrophic’ for precarious international students, particularly in the context of the Covid-19 pandemic.

4.2.3 EEA nationals not eligible for EUSS

“We work with EEA nationals to help them apply under the EUSS to secure their status. Due to long histories of rough sleeping and high support needs it can be challenging to obtain evidence of residence - sometimes taking months to find the necessary evidence. I am concerned that some people we work with will be unable to obtain evidence (including a passport) in order to apply to the scheme before it finishes.”

Caseworker at a migrant support charity in London

The Rough Sleeping Rule will not apply to non-UK nationals holding or seeking leave to remain in the UK through Appendix EU of the Immigration Rules. However, the Rule could be applied to EU citizens who fail to secure Pre-Settled or Settled Status before the EU Settlement Scheme deadline of 30 June 2021 and new arrivals from the EU after 31 December 2020.

The government has stated that late applications to the EU Settlement Scheme (EUSS) will be accepted where a decision-maker is ‘satisfied that there are reasonable grounds for the person’s failure to meet the deadline’ (Home Office, 2021). However, as of the date on which this report was finalised no detailed guidance had been published on what the Home Office intends to consider ‘reasonable grounds’ for missing the EUSS deadline.

There are longstanding concerns that many homeless and otherwise vulnerable EU citizens, including rough sleepers will not resolve their immigration status through the EUSS before the deadline. This may be as a result of multiple barriers including: lack of awareness of the scheme or deadline; lack of digital literacy; language issues; mental and physical health difficulties; and ‘difficulties in providing identity and residence evidence’ (Sumption and Fernandez-Reino 2020). These concerns were echoed in our NGO survey and by interviewees.

As reported through our survey of frontline organisations (see section 4.3), two vulnerable groups who are experiencing difficulties in applying to the EUSS are Roma people (including Roma rough sleepers) and elderly EU citizens.

In response to a letter from Crisis expressing concerns about the effect of the Rough Sleeping Rule on vulnerable EEA nationals, Priti Patel MP and Robert Jenrick MP stated:

“In relation to EEA citizens, you refer to the High Court judgment [...] which ruled that any EU citizen found rough sleeping cannot, on this basis alone, be considered to have abused EU Treaty Rights. The UK is bound by this ruling until the end of the transition period and Immigration Enforcement is therefore unable to take removal or deportation

action where appropriate against EEA citizens found rough sleeping, except on a case by case basis where there is criminality or other misuse of Treaty Rights. EEA citizens found to be sleeping rough are encouraged to apply for status under the EU Settlement Scheme - we will continue to provide this support until the scheme closes on 30 June 2021. From 1 January 2021, EEA citizens and their family members newly arriving in the UK will be subject to the same Immigration Rules which apply to non-EEA nationals, including the new rough sleeping rule [...]"

(Home Office 2020c)

Case Study: Anna

Anna is a single mother and an EU citizen. She has lived in the UK since she was a child. She is in rent arrears and was refused Universal Credit as she was deemed not to have a right to reside. She has been trying to apply for status through the EU Settlement Scheme, but she is struggling to provide the necessary documents due to issues obtaining a new passport from her national embassy. She has been unable to prove that she has Permanent Residence in the UK as she is estranged from both her parents and therefore cannot prove that they were exercising treaty rights when she was a child. Anna and her children are at risk of street homelessness due to her financial situation.

Case Study: Piotr

Piotr is an EU national who arrived in the UK over 20 years and has acquired permanent residence. Piotr experienced a period of homelessness during which he lost all his identifying documents. He was not able to prove his status and was therefore unable to access support to address his housing issues or find employment. His lack of ID, combined with a low level of English and multiple mental health issues, has made it difficult for him to apply to the EU Settlement Scheme.

4.2.4 Human rights applicants

Non-UK nationals making applications on the basis of their human rights within the Immigration Rules are exempted from the Rough Sleeping Rule.

However, those making human rights applications outside the Immigration Rules, or granted leave on this latter basis, are not exempted. Such non-UK nationals are usually applying under Article 3 (prohibiting inhuman or degrading treatment or punishment) or Article 8 (the right to a family and private life) of the European Convention on Human Rights (ECHR).

A number of our survey respondents (see 4.3) expressed the view that non-UK nationals making, or eligible to make, human-rights applications outside the Immigration Rules would be likely to fall foul of the Rough Sleeping Rule. It was noted that such individuals are frequently elderly, in poor health and have unmet care needs, with support frequently having to be sought under the Care Act 2014. Respondents noted, however, that it was often extremely difficult to access appropriate support and accommodation for homeless non-UK nationals under the provisions of the Care Act 2014.

From our research it appears that the government does not publish statistics on the number of non-UK nationals making human rights applications outside the Immigration Rules.

Case Study: Nana

Nana is a Ghanaian national who applied for leave to remain on Article 8 (family/private life) grounds outside the Immigration Rules. She was granted leave to remain with recourse to public funds but found it difficult to access accommodation due to delays in the processing of her pension and housing claims. These delays have been exacerbated by the Covid-19 pandemic. Nana is in poor health and cannot read or write. She has been told to move out of the place where she is staying, but she has nowhere to go.

Case study: Mary

Mary has been in the UK for 20 years. She is elderly and has been homeless for many years, relying on various friends for accommodation. At the beginning of the Covid-19 pandemic she was asked to leave the place where she was staying due to overcrowding. Mary had nowhere to go. She was assisted by a charity to approach her local authority for support. The local authority accommodated her on an emergency basis due to the pandemic. Mary was assisted to make an application for leave to remain on the basis of long residence, but the Home Office said she had provided insufficient evidence. She was, however, granted leave to remain outside the Immigration Rules on Article 8 grounds.

Case Study: Jordan

Jordan has been in the UK for 15 years. They experienced long-term sexual exploitation in their country of origin. They were forced into rough sleeping as a result of the Covid-19 pandemic because they were no longer able to sleep at their church. They experienced a severe mental health crisis while rough sleeping and were accommodated by their local authority under the Care Act as a result. They are currently being assisted to make an application for leave to remain on Article 8 grounds outside the Immigration Rules.

4.2.5 People on ancestry visas

Commonwealth citizens whose grandparents were born in the UK, the Channel Islands or the Isle of Man and who are intending to seek employment in the UK can apply for an ancestry visa.

People on ancestry visas have the right to work but are subject to the NRPF condition.

From our research it appears that the government does not publish statistics on the number of Commonwealth citizens residing in the UK on ancestry visas.

Case Study: Toby

Toby is in the UK on an ancestry visa (subject to the NRPF condition). He lost his job at the beginning of the Covid-19 pandemic. He was subsequently unlawfully evicted from his accommodation. He slept rough for over two weeks during the height of the first UK 'lockdown'.

4.2.6 Stateless people

A stateless person is someone ‘who is not considered as a national by any State under the operation of its law’ according to the 1954 Convention relating to the Status of Stateless Persons (Orchard et al. 2019).

The right to a nationality is protected under Article 15 of the Universal Declaration on Human Rights. There are, however, millions of stateless people worldwide, including in the UK. Stateless individuals experience marginalisation, discrimination and poverty in their countries of origin and in ‘host’ countries (UNHCR 2018). It has been argued that the UK’s approach to stateless individuals ‘does not comply with international obligations and best practice’ (Orchard et al. 2019).

Part 14 of the UK Immigration Rules provides for a grant of leave to be made to a person who: is recognised to be stateless under the definition in customary law and in the 1954 UN Convention on the Status of Stateless Persons; and is not excluded from recognition due to various exclusion criteria.

The legal expert on statelessness we consulted for this report is the co-author of a best practice guide on statelessness applications published by the Immigration Law Practitioners’ Association. In a briefing note (see Appendix D), the expert indicated that a significant proportion of their organisation’s clients (‘10 clients (of about 60-70 records available [])’ had experienced street homelessness. They further noted that ‘[the Rough Sleeping Rule] is likely to result in a good proportion of refusals [of people making statelessness applications]’.

Case Study: Alex

Alex is stateless as he is not recognised as a citizen by the authorities in his country of origin. He is being assisted to make a statelessness application. He has been street homeless in the past as a result of not having the right to work or claim benefits.

4.2.7 Domestic workers

An estimated 15,000-16,000 domestic worker visas are issued in the UK each year. Non-UK nationals in the UK on domestic worker visas must comply with strict conditions relating to their employment. They are usually not permitted to change employer and are subject to the NRPF condition. Some domestic servants in the UK experience cruelty, exploitation, and abuse at the hands of employers, and many report being unaware of their visa and employment rights. Escaping an abusive or exploitative employer will often result in a person on a domestic worker visa becoming undocumented (Mantouvalou 2015).

On 16 April 2020 the charity Kalayaan, which provides advice, advocacy and support services to migrant domestic workers, wrote to the immigration minister Kevin Foster MP and the minister for safeguarding Victoria Atkins MP expressing concern about the effect of the Covid-19 pandemic on migrant domestic workers. The letter addressed the possible impact of the pandemic on this group in light of their exclusion from public funds:

“If a migrant domestic worker has their employment terminated, they cannot benefit from the furlough scheme, they cannot claim statutory sick pay, and because of the ‘no recourse to public funds’ (NRPF) condition, they cannot apply for universal credit. As a result, they are at greater risk of becoming destitute. We are concerned, that as a result of this cohort’s previous experience of being exploited, they are more likely to revert to an exploitative situation in order to survive, as this is a familiar pattern of treatment, and they have no alternatives available to them. These clients are at greater risk of exploitation.”

(Gava 2020)

In May 2020 it was reported that people on domestic worker visas were at risk of destitution as a result of being laid off during the pandemic (Bulman 2020b).

Case Study: Jasmine

Jasmine is a victim of human trafficking. She was working as a domestic worker but was turned away by her employer. She was forced to sleep at an airport for several days because she did not know where to go for help.

Case Study: Faith and Ivan

Faith and Ivan were working as domestic workers until they were asked to leave their employer’s home in the middle of the night because of an altercation. They had to sleep rough for several nights until they found support from a charity.

4.2.8 Survivors of domestic abuse

A recent study indicates that migrant women fleeing domestic violence or abuse are at heightened risk of destitution, especially where they have an insecure immigration status or are subject to the NRPF condition. ‘[D]ata sharing between victim support services and the Home Office for immigration control purposes’ can deter survivors from seeking support. (McIlwaine et al. 2019).

People on spousal visas are eligible for the Destitution Domestic Violence (DDV) concession, allowing them to apply for indefinite leave to remain (ILR) in the UK if they can show that their marriage has broken down as a consequence of domestic abuse. However, many other migrant women are not eligible for the DDV concession. Such women are often either legally or practically excluded from statutory assistance, including refuge provision, as a result of their NRPF status (see, for example, Anitha et al. 2016).

4.2.9 Asylum seekers excluded from the Refugee Convention

Some asylum seekers are excluded from the Refugee Convention (Home Office 2016). Such individuals may be granted Discretionary Leave to Remain instead.

Such non-UK nationals are not exempt from the Rough Sleeping Rule.

Case Study: Ahmed

Ahmed arrived in the UK and claimed asylum. His asylum claim was refused on the basis that he was excluded from the Refugee Convention. He was granted Discretionary Leave to Remain subject to NRPF, which he had to renew every six months. He was unable to find stable employment as employers were reluctant to hire people with less than six months valid leave to remain. Ahmed has post-traumatic stress disorder and depression, which have been exacerbated by his experience of destitution in the UK. Ahmed was accommodated in night shelters at the beginning of the pandemic. He began rough sleeping when the shelters closed.

4.2.10 People with protected characteristics

The Equality Act 2010 prohibits discrimination on the basis of: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; or sexual orientation (EHRC 2020).

People on domestic worker visas and survivors of domestic abuse (see 4.1.7 and 4.1.8) are disproportionately women. It has already been noted (see 4.2.3) that elderly EU citizens may fail to apply to the EU Settlement Scheme before the deadline of 30th June 2021.

This section deals with other groups of people with protected characteristics who may fall foul of the Rough Sleeping Rule.

Relatively little research has been done on rough sleeping among non-UK nationals with protected characteristics. However, there is a wealth of evidence that people with protected characteristics under the Equality Act are disproportionately represented among rough sleepers in general.

Young people who identify as LGBTIQ+ are significantly represented among young homeless people (Albert Kennedy Trust 2014). ‘LGBTIQ+ people are disproportionately more likely to be homeless or insecurely housed than their non-LGBTIQ+ peers, and are at higher risk of substance use and mental health issues due to discrimination, lack of acceptance and abuse’ (Homeless Link 2020).

According to the Greater London Authority, 50% of those rough sleeping in Greater London in 2018/19 had a mental health need, while those with ‘[t]hose with protected characteristics of race and disability are over-represented among rough sleepers’ (GLA 2020).

Non-UK nationals of Roma origin are at increased risk of rough sleeping due to a combination of factors including; past and current discrimination and persecution; lack of culturally sensitive service provision; and criminalization and stigmatization in the media and by some statutory and commissioned services (Felja and Greason 2016; Meredith and Carey 2020)

4.3 Views of support organisations

Our survey was responded to by 40 organisations directly engaged with the issue of non-UK-national homelessness. The majority of respondents were working in London, the North East

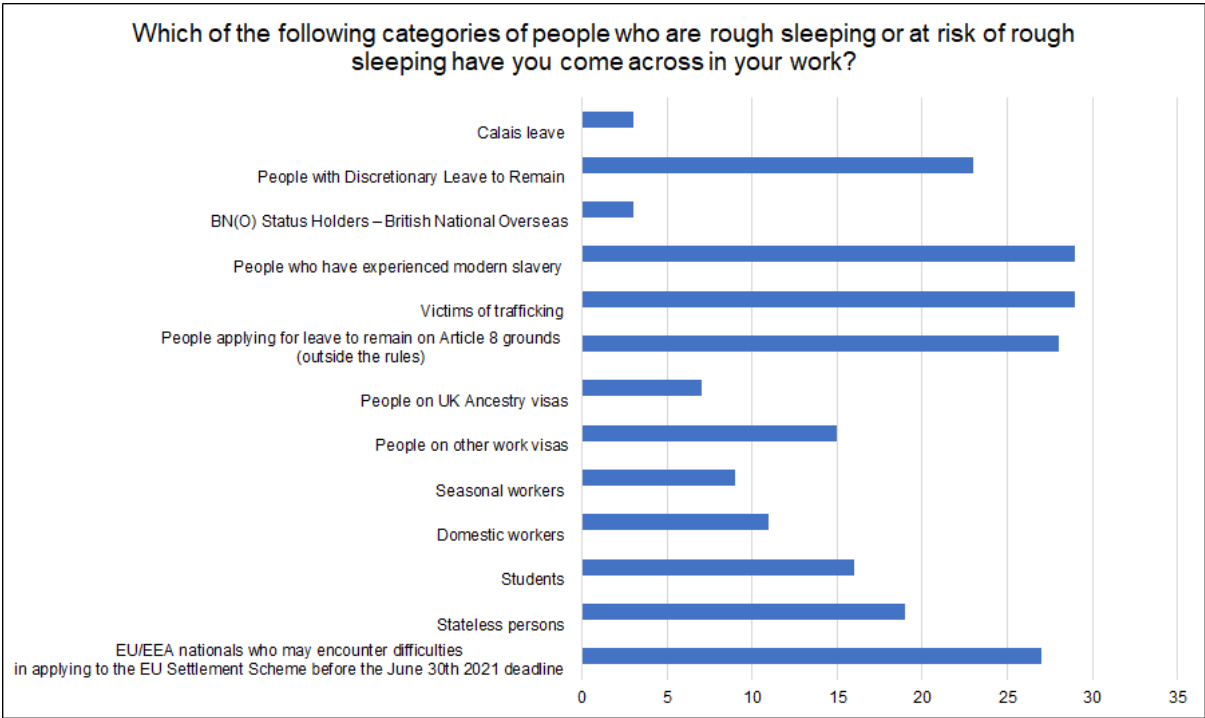
of England or at a national level in the migrants’ rights, human rights, or homelessness sectors. One respondent was from a local authority and another was from a statutory NHS service.

Respondents were asked about their professional contact with non-UK nationals from a number of different categories, including those discussed in section 4.2 of this report (see Figure 1 below). The most common categories of non-UK national who were reported to be rough sleeping or at risk of doing so, and with whom organisations had regular contact, were as follows:

- Victims of trafficking;
- Victims of modern slavery;
- People applying for leave to remain on Article 8 grounds outside the Immigration Rules;
- Vulnerable EU/EEA nationals who may encounter difficulties in applying to the EU Settlement Scheme before the 30 June 2021 deadline; and
- Stateless persons.

The majority of organisations surveyed (82%) indicated that they were currently working with people in potentially affected categories who were, or were at risk of, rough sleeping.

Figure 1



4.3.1 Potential impact of the Rough Sleeping Rule

We asked organisations whether they thought that the Rule would have any impact in terms of the willingness of non-UK nationals sleeping rough (or at risk of sleeping rough) to seek support from charities and other support services. The majority of organisations (87.5%) said they thought it would. A number of respondents noted that the people they worked with were already

fearful of statutory and other services, including charities, as a result of their precarious immigration status.

“Our visitors frequently express anxiety or refuse to approach statutory services for housing support, even when entitled, because of fears around their immigration status. I don’t see how this rule will do anything other than compound and increase this legitimate anxiety.”

Caseworker at a migrant support charity in London

“I think the new rule could cause people to ‘hide’ their rough sleeping from people who are supporting them, for fear that it will cause their application to be refused.”

Caseworker at a migrant support charity in London

Some respondents referenced a pre-existing lack of trust as a result of past data sharing between homelessness charities and Home Office immigration-enforcement teams. It was believed that the Rough Sleeping Rule would compound these trust issues.

“I believe people will be less willing to engage with services and may avoid seeking help, delaying them from being able to resolve their immigration problems. Previously, when outreach teams were collaborating with the [H]ome [O]ffice, there was widespread fear and disengagement, and individual outreach workers reported that they were less able to help people into accommodation because of this mistrust and disengagement.”

Advice worker at a homeless day centre in London

Survey respondents were asked how they thought the Rough Sleeping Rule would impact the people they worked with. The majority expressed concern that the changes would cause high levels of fear, anxiety, and stress among non-UK nationals at risk of or experiencing homelessness. Many organisations believed these effects would also be felt by groups who were exempt from the policy.

“Although i[t] has been stated that it does not include people who are applying for Settled Status which is the position for many of the people we support; as soon as clients discover rough sleeping could be a reason to refuse leave to remain they will stop engaging with services [...] There is a much higher likelihood of individuals being exploited and generally individuals will become even more hidden than they already are.”

Outreach worker at an organisation supporting LGBTI refugees and asylum seekers in
London

Respondents believed the changes to the Immigration Rules could lead to an increase in: physical and mental health issues; deaths; exploitation; vulnerability; and domestic abuse. Some respondents were concerned that these impacts would be felt most by people of colour, people with disabilities and victims of modern slavery. A number of respondents said they thought people would be less likely to seek support from services as a result of the new rule.

“It will be frightening. People will be reluctant to identify as rough sleepers and will avoid the authorities. It will impact enormously on anxiety, fear and paranoia.”

Welfare adviser at a migrant support organisation in London

One respondent said they had already encountered local-authority workers who had significantly misunderstood the Rough Sleeping Rule.

“Previously, when the government was targeting EEA migrant rough sleepers, we found this had a significant detriment on ongoing work to help people off the streets. Clients were fearful of ALL services, that they would be reported to the police, so they stopped engaging and getting the help that they needed. [...] It was harder to provide basic needs to this vulnerable group as they were fearful that we would report them to the police. Trust between support services and clients was lost.”

Manager at a homelessness organisation in Yorkshire

4.3.2 Drivers of rough sleeping among non-UK nationals

Respondents were asked about the factors leading their clients/members/service users to sleep rough. Over half (52.5%) cited the NRPF rule and/or other rules preventing access to mainstream welfare benefits and social housing, such as the requirement to pass the Habitual Residence Test (HRT).

Other frequently mentioned drivers of rough sleeping were:

- Immigration status;
- Breakdown in precarious housing arrangements with friends/family or other relationship breakdown;
- Mental health issues;
- Domestic abuse;
- Lack of means to pay for accommodation;
- Loss of employment (including as a result of the Covid-19 pandemic);
- Language barriers.

Respondents also described other causes including: digital exclusion; local authorities refusing to provide accommodation; insecure employment; and lack of awareness of rights and entitlements.

4.3.3 Length of time spent rough sleeping

Organisations were asked how long their clients/members were sleeping rough on average. Most respondents said this varied considerably and was difficult to predict. In some cases, people were sleeping rough only for very short periods of time. In others it was for much longer periods (e.g. 15 years).

“Hugely varies - sometimes it is sporadic, few days sofa surfing, few days on night buses. Some visitors have slept rough consistently for years. Since the pandemic, a lot of people who previously had relatively stable access to accommodation had to sleep rough when their informal networks of support could no longer support them.”

Caseworker at a migrant support charity in London

4.3.4 Support for non-UK nationals at risk of rough sleeping

4.3.4.1 Since the start of the Covid-19 pandemic

Respondents were asked whether, since the start of the Covid-19 pandemic, they believed sufficient support was available and accessible to non-UK nationals at risk of rough sleeping to avoid them being placed into a situation where they had to sleep rough.

At least half of our respondents did not think that sufficient support had been available and accessible to migrants at risk of rough sleeping since the start of the pandemic. Many organisations mentioned the ‘Everyone In’ scheme, highlighting both its positive effects and its limitations. Respondents told us that those who had been accommodated at the beginning of the pandemic under ‘Everyone In’ were still, for the most part, being accommodated.

However, respondents also reported widespread variation in practice between local authorities, with some employing ‘gatekeeping’ strategies to refuse people accommodation and other support (see also Dickson et al. 2020), and a sense that the scheme had been problematically short-term. One worker at a charity contracted to provide homelessness outreach services in London expressed concern that ‘Everyone In’ would ultimately lead to the organisation ‘forc[ing] staff to ask people to return to their home country or evict[ing] [them] back on the streets’.

A number of respondents reported that their clients had been unable to access accommodation support under ‘Everyone In’ after the end of the first UK ‘lockdown’.

A number of respondents told us that data sharing between local authorities and the Home Office had deterred vulnerable people from seeking local authority support.

Others described issues with support under ‘Everyone In’ such as inadequate accommodation and a lack of support to resolve people’s immigration and health issues.

“Patchy support available but the environments often generate fear and this can affect uptake.”

Health worker in North West England

A key issue with ‘Everyone In’ reported by respondents was a lack of awareness of the scheme among local authorities and people who were, or were at risk of, rough sleeping.

“Every[one] In’ provided new and positive support for non-UK nationals at risk of rough sleeping but this provision ended far too soon. There was no way for all of the people who needed it to be aware of this or to be accessed by professionals who could refer them before the referral pathway closed.”

Caseworker at a migrants’ rights organisation in the West Midlands

Other reasons given for a lack of sufficient support included: the NRPF condition; fear of authorities; and the closure of night shelters and other organisations providing emergency accommodation support.

4.3.4.2 Before the Covid-19 pandemic

A large majority of respondents (87.5%) felt that before the Covid-19 pandemic insufficient support was available and accessible to non-UK nationals at risk of rough sleeping to avoid them being placed in a situation where they had to sleep rough.

“If your immigration status does not allow you to access mainstream housing and benefits then you are at a significant risk of homelessness in the event that you are not able to pay for housing. Whilst there is provision for accommodation to be provided to asylum seekers and failed asylum seekers (albeit far from satisfactory), there are a wide range of persons with immigration status where it is not at all clear how they can expect to access support in the event that they are at risk of homelessness.”

Housing solicitor in London

The majority of respondents cited the NRPF condition as a significant barrier to accessing support to avoid rough sleeping. Others mentioned: the absence of legal aid for immigration and other legal cases; widespread misunderstanding of migrants’ rights within local authorities and the homelessness sector; fear of deportation; and a lack of advice and support for migrants around housing and welfare.

“I think the hostile environment also has a huge impact on people’s willingness / ability to ask for help from authorities - there is now a bigger concern that people who ask for help will be ‘deported’.”

Caseworker at a migrants’ rights organisation in London

“Almost all prevention work has been carried out for people that have a statutory entitlement and has excluded non UK nationals [...] Non UK nationals are treated like they don’t exist by services in the main and the[re] is very little appetite to provide long term support because it is considered too difficult and the legal position hampers statutory organisations from offering services that help relieve or prevent rough sleeping.”

Manager at a homeless day centre in the West Midlands

4.3.5 Support for non-UK nationals who are rough sleeping

4.3.5.1 Since the start of the Covid-19 pandemic

Respondents were also asked whether since the start of the Covid-19 pandemic, they thought sufficient support was available and accessible to non-UK nationals who were already rough sleeping to allow them to find accommodation which was sustainable.

Most organisations (75.5%) who responded to the survey believed that since the pandemic there had not been sufficient support available and accessible to non-UK nationals who were already sleeping rough to allow them to find sustainable accommodation. Again, the NRPF condition was most frequently mentioned as the reason why rough sleepers were unable to access sustainable support.

“There is, on the whole, no support for people with NRPF to resolve homelessness in the long-term, or at least while they are subject to NRPF.”

Caseworker at a migrant support organisation in London

Other factors preventing migrant rough sleepers from accessing support that were reported by organisations included: language barriers; mental health issues; lack of awareness of migrants’ rights among statutory services; fear of deportation; high fees for immigration applications; exploitation; lack of affordable accommodation; and the ‘gatekeeping’ of services by local authorities.

“Most people are turned away from local councils and even when they should in theory be eligible for support officers seem to try their best to [...] turn them down.”

Chair of a migrant support organisation in Yorkshire

4.3.5.2 Before the Covid-19 pandemic

The majority of respondents (85%) felt that, before Covid-19, there was insufficient support available and accessible to non-UK nationals who were already sleeping rough to find sustainable accommodation. As with the other questions, responses cited the NRPF rule as a key reason why migrants sleeping rough could not access support. Other barriers mentioned were: data-sharing between statutory services; the fact that some charities were contracted to or commissioned by statutory services or the Home Office; exploitation; lack of legal-aid provision; and local-authority ‘gatekeeping’.

“There is little to no support available for people with NRPF and they are forced into destitution by hostile environment policies. In addition, data sharing with [the] Home Office means that when they are sleeping rough, they may decide not to approach statutory services or private orgs / charities contracted by statutory services.”

Caseworker at a migrant support organisation in London

“Streetlink services to find and assist people sleeping rough are overstretched and require someone to be sleeping in the same place every night for long stretches of time. This is not often possible, especially for people new to rough sleeping, as they do not feel safe to stay in one place due to the threat of violence from others, and lack of equipment to tolerate the cold. Non UK nationals may avoid outreach teams due to historic cooperation with the [H]ome [O]ffice. Also, even when outreach teams find people, there is a lack of available accommodation options for them.”

Advice worker at a homeless day centre in London

“A local authority’s duty of care, particularly to adults at risk, does not in practice extend to non-UK nationals who are sleeping rough.”

Outreach worker at an organisation supporting LGBTIQ+ refugees and asylum seekers
in London

4.4 Views of local government and MPs

Several local authorities have publicly expressed their opposition to the Rough Sleeping Rule, as have a number of MPs and some of the UK's largest homelessness charities (Taylor 2020).

In November 2020 the GLA called on the government to 'immediately reverse' the Rough Sleeping Rule. The GLA has stated that its commissioned services, including homelessness outreach teams, 'will not collaborate with such draconian measures' (GLA 2020c).

On 4 December 2020 Islington council stated its belief that the Rule is 'unfair and discriminatory, and likely to play into the hands of exploitative landlords and employers' and said that the council would not be 'collaborating' with the Rule.

The statement continued:

"The work we do to help rough sleepers is based on trust. The success of our work depends on our ability to gain, nurture and maintain the trust of the rough sleepers we work with who are often very vulnerable, hesitant to seek help, and traumatised. Trust is vital so people can tell us about issues like exploitation, modern slavery, abuse and other vulnerable people at risk. We will not compromise this by cooperating with discriminatory rules that make life harder for some of our very most vulnerable people."

(Islington 2020)

On 7 December 2020 Southwark council indicated that it would not 'collaborate' with the Rule (Southwark 2020).

On 9 December 2020, Lewisham council called the Rough Sleeping Rule a 'cruel attack on the most vulnerable in our society' and stated that the local authority would not 'collaborate with the Home Office in enforcing these draconian measures' (Lewisham 2020).

On the same day the Greater Manchester Combined Authority (GMCA) stated its opposition to the Rule, stating that it would 'only serve to make extremely vulnerable people more so by pushing them further away from the services and support they so desperately need' (Rodgers 2020).

5 Conclusion

This report has analysed the recent changes to the Immigration Rules to make rough sleeping a discretionary ground for the refusal of cancellation of leave to enter or remain in the UK. It has outlined the key drivers of rough sleeping in the UK in general and among non-UK nationals in particular. It has considered the context and rationale for the Rule and its potential impact on a number of groups, and examined the views of key stakeholders, including the homelessness, human- and migrants'-rights sectors, local authorities, and MPs.

We have presented evidence that the Rule may be discriminatory, that it may put the UK in breach of its obligations to (among others) victims of trafficking and modern slavery and stateless individuals, and that it may exacerbate, rather than alleviate, the problem of rough sleeping among non-UK nationals. Finally, we have demonstrated that a broad range of stakeholders have serious concerns about the Rule and its potential negative impact.

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APPENDIX A

CHAIN data on non UK-national rough sleeping

Table 1: Non-UK nationals sleeping rough in London 2015-2020

Percentages are calculated in relation to the total number of people seen sleeping rough

	Total number of people seen rough sleeping	Non-UK nationals sleeping rough	CEE nationals sleeping rough	Other European nationals sleeping rough	African nationals sleeping rough	Asian nationals sleeping rough	Nationality unknown
2019/20	10726	5089 47.4%	2924 27.2%	885 8.2%	651 6.7%	520 6%	954 8.8%
2018/19	8855	4131 46.6%	2518 28.4%	557 6.2%	459 5.1%	358 4%	701 7.9%
2017/18	7484	3276 43.7%	1677 23.5%	556 7.8%	458 6.4%	416 5.8%	346 4.6%
2016/17	8108	4052 49.9%	2337 28.8%	701 8.6%	470 5.7%	375 4.6%	403 4.9%
2015/16	8096	4675 57.7%	2924 36.1%	745 9.2%	434 5.3%	386 4.7%	150 1.8%

Base: Greater London Authority (2016; 2017; 2018; 2019; 2020).

Table 2: Top nationalities of non-UK nationals sleeping rough in London (2019/20)

Nationality	Number	Percentage
Romania	1491	15.3%
Poland	828	8.5%
India	218	2.2%
Lithuania	203	2.1%
Bulgaria	155	1.6%
Eritrea	144	1.5%
Portugal	132	1.4%
Italy	119	1.2%
Ireland (Republic of)	111	1.1%
Somalia	86	0.9%
Sudan	86	0.9%

Base: 10726 people seen rough sleeping by outreach workers in 2018/19 (GLA 2020b)

Table 3: Top nationalities of non-UK nationals sleeping rough in London (2018/19)

Nationality	Number	Percentage
Romania	1279	15.7%
Poland	665	8.2%
Lithuania	193	2.4%
India	144	1.8%
Italy	130	1.6%

Bulgaria	128	1.6%
Ireland (Republic of)	120	1.5%
Portugal	98	1.2%
Hungary	78	1.0%
Latvia	77	0.9%

Base: 8855 people seen rough sleeping by outreach workers in 2018/19 (GLA, 2019)

Table 4: Top nationalities of non-UK nationals sleeping rough in London (2017/18)

Nationality	Number	Percentage
Romania	664	9.3%
Poland	561	7.9%
India	170	2.4%
Lithuania	140	2.0%
Italy	126	1.8%
Ireland (Republic of)	119	1.7%
Portugal	115	1.6%
Bulgaria	101	1.4%
Eritrea	100	1.4%
Latvia	70	1.0%

Base: 7138 people seen rough sleeping by outreach workers in 2017/18 (GLA 2018)

Appendix B.

FOI requests and responses

3rd November 2020

Dear Sir/Madam

Freedom of Information Act (“FOIA”) request

We write to request the following information under the FOIA in relation to:

- **Changes to immigration rules to make rough sleeping a ground for refusal or cancellation of permission to stay**

We set out our requests below. Please note that although we have included a list of requests, this is for information that should be readily accessible to relevant managers.

We note that these changes to the immigration rules were published at www.gov.uk/government/publications/statement-of-changes-to-the-immigration-rules-hc-813-22-october-2020#history on October 22nd 2020 and have been laid before Parliament.

We therefore do not consider that it would be appropriate for you to apply an exemption under s35 FOIA 2000.

Please provide us with:

1. Copies of any human rights assessments that have been conducted with respect to these changes
2. Copies of any impact assessments that have been conducted with respect to these changes
3. Copies of any Public Sector Equality Duty (PSED) assessments that have been conducted with respect to these changes
4. Copies of any published or unpublished consultations undertaken with respect to these changes
5. Any correspondence or documents relating to obtaining legal advice the department has sought or received with respect to these changes (for the avoidance of doubt, we are not requesting disclosure of the substance of the legal advice)
6. Copies of any documents or correspondence relating to any agreements or discussions of potential agreements with other stakeholders around information sharing for the purposes of identifying non-UK nationals sleeping rough. This request includes but is not limited to copies of any data protection protocols to be relied on for these purposes.
7. Any instructions or other guidance that have been produced (whether currently in draft form or otherwise) on how decision-makers are to apply paragraphs 9.21.1 and 9.21.2 of the Amended Immigration Rules.

If you require any further clarification as to our request, kindly inform us promptly and we would be happy to assist.

As stated above, if you have any queries in respect of this request please do not hesitate to contact us.

If you hold any of the information requested but consider it is exempt from disclosure, please state specifically what exemption you rely (including the relevant statutory provision) and the reason you consider it to be applicable.

Yours faithfully,

Benjamin Morgan
Public Interest Law Centre



Home Office

Border, Immigration &
Citizenship System and
International Group
2 Marsham Street
London
SW1P 4DF

Tel: 020 7035 4848
Fax: 020 7035 4745
www.gov.uk/homeoffice

Benjamin Morgan
Public Interest Law Centre

By Email: [REDACTED]

FOI Reference: 61037

Date: 2 December 2020

Dear Mr Morgan,

Thank you for your e-mail of 3 November, in which you ask for information in regards to the changes to immigration rules to make rough sleeping a ground for refusal or cancellation of permission to stay

Your request has been handled as a request for information under the Freedom of Information Act 2000.

We are considering your request. Although the Act carries a presumption in favour of disclosure, it provides exemptions which may be used to withhold information in specified circumstances. Some of these exemptions, referred to as 'qualified exemptions', are subject to a public interest test. This test is used to balance the public interest in disclosure against the public interest in favour of withholding the information. The Act allows us to exceed the 20 working day response target where we need to consider the public interest test fully.

The information which you have requested is being considered under the exemption Sections 35 which relate to the formulation or development of government policy. These are qualified exemptions and to consider the public interest test fully we need to extend the 20 working day response period. We now aim to let you have a full response by 4 January 2021.

Yours sincerely

Criminality Policy

BICS Policy and International Group



Home Office

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2 Marsham Street
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SW1P 4DF

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Fax: 020 7035 4745
www.gov.uk/homeoffice

Benjamin Morgan
Public Interest Law Centre

By Email: [REDACTED]

FOI Reference: 61037

Date: 12 January 2021

Dear Mr Morgan,

Thank you for your e-mail of 11 January regarding your email of 3 November 2020, in which you ask for information regarding the changes to immigration rules to make rough sleeping a ground for refusal or cancellation of permission to stay

I regret that we have been unable to send you a full response to your request by 4 January as stated in our letter of 2 December 2020. This is because consideration of your request is taking longer than we anticipated. I would like to apologise on behalf of the Department for this further delay, but I can assure you that we are dealing with your request and we will send you a full reply as soon as we can.

Yours sincerely

Criminality Policy

BICS Policy and International Group

From: Eve Dickson
Sent: 21 February 2021 19:44
To: Benjamin Morgan (PILC)
Subject: Fw: FOIA request

Sent from ProtonMail mobile

----- Original Message -----

On 14 Nov 2020, 09:52, Eve Dickson <[REDACTED]> wrote:

Dear Home Office,

I have not received an acknowledgment in response to my request.

Please can you confirm whether my request from 5/11/20 has been received?

Best wishes,
Eve

----- Original Message -----

On Thursday, 5 November 2020 18:17, Eve Dickson <[REDACTED]> wrote:

Dear Home Office,

This is a request for information under FOIA 2000 in relation to the recently announced changes to the immigration rules to make rough sleeping ground for refusal or cancellation of permission to stay.

Please could you send me:

Copies of any documents or correspondence relating to the decision to make these changes, including any analysis of the Department's aims in, or reasons for, introducing them. This request includes but is not limited to the following, and I ask that if you do not hold either of these pieces of information that you confirm this:

- a. Any statistical information on numbers of non-UK-national rough sleepers; and
- b. The cost to public authorities of rough sleeping.

If you believe any of the information is exempt please explain why.

Kind regards,
Eve Dickson



Home Office

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International Group
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London
SW1P 4DF

Tel: 020 7035 4848
Fax: 020 7035 4745
www.gov.uk/homeoffice

Eve Dickson

By Email: [REDACTED]

FOI Reference: 61226

Date: 13 January 2021

Dear Ms Dickson,

Thank you for your e-mails of 5th and 14th November, in which you ask for information in relation to the recently announced changes to the immigration rules to make rough sleeping ground for refusal or cancellation of permission to stay.

I regret that we have been unable to send you a full response to your request by 15 January 2021 as stated in our letter of 15 December 2020. This is because consideration of your request is taking longer than we anticipated. I would like to apologise on behalf of the Department for this further delay, but I can assure you that we are dealing with your request and we will send you a full reply as soon as we can.

Yours sincerely

Criminality Policy

BICS Policy and International Group



Home Office

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Citizenship System and
International Group
2 Marsham Street
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SW1P 4DF

Tel: 020 7035 4848
Fax: 020 7035 4745
www.gov.uk/homeoffice

Eve Dickson

By Email: [REDACTED]

FOI Reference: 61226

Date: 13 January 2021

Dear Ms Dickson,

Thank you for your e-mails of 5th and 14th November, in which you ask for information in relation to the recently announced changes to the immigration rules to make rough sleeping ground for refusal or cancellation of permission to stay.

I regret that we have been unable to send you a full response to your request by 15 January 2021 as stated in our letter of 15 December 2020. This is because consideration of your request is taking longer than we anticipated. I would like to apologise on behalf of the Department for this further delay, but I can assure you that we are dealing with your request and we will send you a full reply as soon as we can.

Yours sincerely

Criminality Policy

BICS Policy and International Group

From: [REDACTED]
Sent: 04 November 2020 11:02
To: Benjamin Morgan (PILC)
Subject: Fw: FOI 61048 - ([REDACTED]) - 2020-11-03 - (Acknowledgement)

FYI

-
From: FOI Requests <FOIRequests@homeoffice.gov.uk>
Sent: 04 November 2020 07:49
To: [REDACTED]
Subject: FOI 61048 [REDACTED] - 2020-11-03 - (Acknowledgement)

Dear [REDACTED],

Thank you for contacting the Home Office with your request.

This has been assigned to a caseworker (case ref **61048**). We will aim to send you a full response by **02/12/2020** which is twenty working days from the date we received your request.

If you have any questions then please do not hesitate to contact us.

Thank you,

N McKenzie

Home Office

From: [REDACTED] >
Sent: 03 November 2020 15:50
To: FOI Requests <FOIRequests@homeoffice.gov.uk>
Subject: Freedom of Information Request - Rough Sleeping as a Ground for Refusal/Cancellation of

Dear Home Office,

This is a Freedom of Information request.

I am seeking information about changes to the immigration rules (as laid before Parliament on 22/10/2020 via Statement HC 813) to make 'rough sleeping' grounds for refusal or cancellation of a visa.

Please could you disclose:

1. Copies of any documents, correspondence, analysis, and /or research that was undertaken with respect to possible alternatives to these changes.
2. Copies of any documents, correspondence, analysis and / or research that was undertaken with respect to supporting migrant rough sleepers by e.g. commissioning immigration advice / accommodation.

Please could you acknowledge receipt of this request.

Thanks,

[REDACTED]

This email and any files transmitted with it are private and intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error please return it to the address it came from telling them it is not for you and then delete it from your system. This email message has been swept for computer viruses.



Home Office

Border, Immigration &
Citizenship System and
International Group
2 Marsham Street
London
SW1P 4DF

Tel: 020 7035 4848
Fax: 020 7035 4745
www.gov.uk/homeoffice

By Email: [REDACTED]

FOI Reference: 61048

Date: 2 December 2020

Dear Ms [REDACTED],

Thank you for your e-mail of 3 November, in which you ask for information in regards to the changes to the immigration rules (as laid before Parliament on 22/10/2020 via Statement HC 813) to make 'rough sleeping' grounds for refusal or cancellation of a visa.

Your request has been handled as a request for information under the Freedom of Information Act (FOIA) 2000.

We are considering your request. Although the Act carries a presumption in favour of disclosure, it provides exemptions which may be used to withhold information in specified circumstances. Some of these exemptions, referred to as 'qualified exemptions', are subject to a public interest test. This test is used to balance the public interest in disclosure against the public interest in favour of withholding the information. The Act allows us to exceed the 20 working day response target where we need to consider the public interest test fully.

The information which you have requested is being considered under the exemption Sections 35 of the FOIA which relate to the formulation or development of government policy. These are qualified exemptions and to consider the public interest test fully we need to extend the 20 working day response period. We now aim to let you have a full response by 4 January 2021.

Yours sincerely

Criminality Policy

BICS Policy and International Group



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Tel: 020 7035 4848
Fax: 020 7035 4745
www.gov.uk/homeoffice

By Email: [REDACTED]

FOI Reference: 61048

Date: 2 December 2020

Dear [REDACTED],

Thank you for your e-mail of 3 November, in which you ask for information in regards to the changes to the immigration rules (as laid before Parliament on 22/10/2020 via Statement HC 813) to make 'rough sleeping' grounds for refusal or cancellation of a visa.

Your request has been handled as a request for information under the Freedom of Information Act (FOIA) 2000.

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Yours sincerely

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[REDACTED]
By Email: [REDACTED]

FOI Reference: 61048

Date: 12 January 2021

Dear [REDACTED],

Thank you for your e-mail of 3 November 2020, in which you ask for information in regards to the changes to the immigration rules (as laid before Parliament on 22/10/2020 via Statement HC 813) to make 'rough sleeping' grounds for refusal or cancellation of a visa

I regret that we have been unable to send you a full response to your request by 4 January 2021 as stated in our letter of 2 December 2020. This is because consideration of your request is taking longer than we anticipated. I would like to apologise on behalf of the Department for this further delay, but I can assure you that we are dealing with your request and we will send you a full reply as soon as we can.

Yours sincerely

Criminality Policy

BICS Policy and International Group

From: Eve Dickson
Sent: 21 February 2021 19:45
To: Benjamin Morgan (PILC)
Subject: Fw: FOIA Request

Sent from ProtonMail mobile

----- Original Message -----

On 4 Dec 2020, 18:28, [REDACTED] > wrote:

Dear Sir/Madam,

Freedom of Information Act (“FOIA”) request

I write to request the following information under the FOIA in relation to ‘On Site Immigration Officials’ in Local Authorities.

I understand that a number of Local Authorities have On Site Immigration Officials placed within departments either on a full-time or part-time basis, and that some local authorities also pay for a similar remote service known as ‘Immigration Enforcement’s Checking and Advice Service’.

1. Please provide a list of all Local Authorities who have On Site Immigration Officials placed with them on a full-time or part-time basis. In addition, please confirm:

Which departments within each local authority On Site Immigration Officials are embedded in;

Which departments within each local authority On Site Immigration Officials provide services to.

2. If not included in response to Question 1, please provide a list of all Local Authorities who are using the ‘Immigration Enforcement’s Checking and Advice Service’. In addition, please confirm:

Which departments within each local authority the ‘Immigration Enforcement’s Checking and Advice Service’ is provided to.

3. Please provide all documentation (including but not restricted to protocols, procedures, policies, Memorandum of Understanding or guidance) concerning each placement.

4. Please provide the job description and/or person specification of the On Site Immigration Officials.

If you have any queries in respect of this request, please do not hesitate to contact us.

If you hold any of the information requested but consider it is exempt from disclosure, please state specifically what exemption you rely upon (including the relevant statutory provision) and the reason you consider it to be applicable.

Please provide acknowledgement of receipt of this request, and I look forward to receiving your response within 20 working days as per the FOIA.

Yours sincerely,

Zoe Dexter

21a Langham Road, London, N15 3QX



Immigration
Enforcement



Immigration Enforcement
Secretariat
Sandford House
41 Homer Road
Solihull
B91 3QJ

www.gov.uk/home-office

Thursday 7 January 2021

Dear ,

Re: Freedom of Information request – 61562

Thank you for your email of 4 December 2020, in which you ask for information relating to On-Site immigration officials. Your request, which is set out in full at Annex A, has been handled as a request for information under the Freedom of Information Act 2000 (FOIA).

We are able to provide the information that you have requested in Annexes B to E.

If you are dissatisfied with this response you may request an independent internal review of our handling of your request by submitting a complaint within two months to foirequests@homeoffice.gov.uk, quoting reference **61562**. If you ask for an internal review, it would be helpful if you could say why you are dissatisfied with the response.

As part of any internal review the Department's handling of your information request would be reassessed by staff who were not involved in providing you with this response. If you were to remain dissatisfied after an internal review, you would have a right of complaint to the Information Commissioner as established by section 50 of the FOIA.

Yours sincerely,

Immigration Enforcement Secretariat
ImmigrationEnforcementFOIPQ@HomeOffice.gov.uk

From: [REDACTED]
Sent: 04 December 2020 18:28
To: FOI Requests <FOIRequests@homeoffice.gov.uk>
Subject: FOIA Request

Dear Sir/Madam,

Freedom of Information Act (“FOIA”) request

I write to request the following information under the FOIA in relation to ‘On Site Immigration Officials’ in Local Authorities.

I understand that a number of Local Authorities have On Site Immigration Officials placed within departments either on a full-time or part-time basis, and that some local authorities also pay for a similar remote service known as ‘Immigration Enforcement’s Checking and Advice Service’.

1. Please provide a list of all Local Authorities who have On Site Immigration Officials placed with them on a full-time or part-time basis. In addition, please confirm:

Which departments within each local authority On Site Immigration Officials are embedded in;

Which departments within each local authority On Site Immigration Officials provide services to.

2. If not included in response to Question 1, please provide a list of all Local Authorities who are using the ‘Immigration Enforcement’s Checking and Advice Service’. In addition, please confirm:

Which departments within each local authority the ‘Immigration Enforcement’s Checking and Advice Service’ is provided to.

3. Please provide all documentation (including but not restricted to protocols, procedures, policies, Memorandum of Understanding or guidance) concerning each placement.
4. Please provide the job description and/or person specification of the On-Site Immigration Officials.

If you have any queries in respect of this request, please do not hesitate to contact us.

If you hold any of the information requested but consider it is exempt from disclosure, please state specifically what exemption you rely upon (including the relevant statutory provision) and the reason you consider it to be applicable.

Please provide acknowledgement of receipt of this request, and I look forward to receiving your response within 20 working days as per the FOIA.

Yours sincerely,

[REDACTED]

On-Site Immigration Officials (OSIOs) are Home Office staff who work with partner organisations, including local authorities. OSIOs provide dedicated support to partners at their request to assist in their understanding of entitlement rules, immigration status and processes.

- 1. Please provide a list of all Local Authorities who have On Site Immigration Officials placed with them on a full-time or part-time basis. In addition, please confirm:**

Which departments within each local authority On Site Immigration Officials are embedded in;

Which departments within each local authority On Site Immigration Officials provide services to.

Annex C provides a list of all local authorities who currently use the service of an OSIO and the relevant department.

- 2. If not included in response to Question 1, please provide a list of all Local Authorities who are using the ‘Immigration Enforcement’s Checking and Advice Service’. In addition, please confirm:**

Which departments within each local authority the ‘Immigration Enforcement’s Checking and Advice Service’ is provided to.

This information is provided in Annex C

- 3. Please provide all documentation (including but not restricted to protocols, procedures, policies, Memorandum of Understanding or guidance) concerning each placement.**

A blank Memorandum of Understanding is attached at Annex D, this sets out the agreement between the relevant parties on the provision of IECAS services

- 4. Please provide the job description and/or person specification of the On-Site Immigration Officials.**

Job description is attached at Annex E.

Local Authority	Departments services are provided to	Base department
London Borough of Barking and Dagenham	No Recourse to Public Funds	No Recourse to Public Funds
London Borough of Barnet	Unaccompanied Asylum-Seeking Children	Unaccompanied Asylum-Seeking Children
London Borough of Bexley	No Recourse to Public Funds Housing	No Recourse to Public Funds Housing
London Borough of Enfield	No Recourse to Public Funds Looked after Children Adult Social Care Adult Mental Health Leaving Care	No Recourse to Public Funds
Essex County Council	No Recourse to Public Funds	No Recourse to Public Funds
Royal Borough of Greenwich	No Recourse to Public Funds	No Recourse to Public Funds
London Borough of Hillingdon	Counter Fraud Department Housing No Recourse to Public Funds Finance Team	Counter Fraud Department
Slough Borough Council	Children's Trust	Children's Trust
Surrey County Council	No Recourse to Public Funds. Unaccompanied Asylum-Seeking Children Leaving Care	Leaving Care
London Borough of Sutton	Children's Social care	Children's Social care
Thurrock Council	Children's Services	Children's Services

Memorandum of Understanding

between

**the Secretary of State for the Home Department acting through
Immigration Enforcement**

and

the London Borough of [Insert name of Borough]

in respect of the provision of Immigration Enforcement's Checking and Advice Service (IECAS)

For the period [insert contract start date] to [insert contract end date]

This **Memorandum of Understanding** (MoU) is made this [insert day of month] day of [insert month and year] between **THE SECRETARY OF STATE FOR THE HOME DEPARTMENT** of 2 Marsham Street, London, SW1P 4DF acting through Immigration Enforcement (“**The Authority**”)

and

THE LONDON BOROUGH OF [insert name of London Borough] of [insert address of London Borough] (“**The Customer**”)

1. BACKGROUND

- 1.1 This MoU outlines the agreement between the Authority and the Customer regarding the provision of IECAS, specifically the utilisation of a member of Home Office staff (“**Officer**”) as defined in Schedule 2.
- 1.2 The Customer wishes to receive the Service as described in Schedule 2.
- 1.3 The Authority agrees to provide the Service, as described in Schedule 2, subject to the Customer making the payments, as described in Schedule 3, and complying with its other obligations as set out in this MoU.

2. STATUS OF THIS MOU

- 2.1 This MoU is not intended to be legally binding. It does not create any rights or obligations enforceable in law, whether in partnership, agency, joint venture or otherwise.
- 2.2 For the avoidance of doubt:
 - 2.2.1 Except where explicitly stated, this MoU shall not affect any of the existing contractual relationships between the Parties.
 - 2.2.2 Nothing in this MoU shall act to prevent the Parties entering into binding legal agreements in relation to other projects in the future.

3. COMMENCEMENT AND TERMINATION

- 3.1 This MoU shall commence on the date of signature of this MoU, by each Party, and shall expire when the MoU is terminated in accordance with Clause 3.2 unless the Parties agree in writing to extend the duration of the MoU.
- 3.2 Should the Customer no longer require the Service, the Customer may terminate this MoU on provision of three (3) months notice in writing. Should the Authority breach the terms of this MoU the Customer may terminate the MoU immediately.
- 3.3 Should the Authority wish to cease providing the Service, the Authority may terminate this MoU on provision of three (3) months notice in writing. Should the Customer breach the terms of this MoU the Authority may terminate the MoU immediately.
- 3.4 Should the Customer fail to pay for the Services provided then the Authority may seek to end the provision of the Services immediately.

4. DEFINITIONS AND INTERPRETATION

- 4.1 In this MoU the words and phrases listed in Schedule 1 have the corresponding meanings.
- 4.2 The headings in this MoU are for ease of reference only and shall not affect the interpretation or construction of this MoU.
- 4.3 Where the context permits, the use of the singular shall be construed to include the plural; the use of plural the singular; and the use of any gender shall include all genders.
- 4.4 References to an Act of Parliament shall be deemed to include any subordinate legislation of any sort made from time to time under the Act.
- 4.5 References to any statute, enactment, order, regulation code or similar instrument shall be construed as a reference to the statute, enactment, order, regulation, code or similar instrument as subsequently amended or re-enacted.
- 4.6 References to “Clauses”, “Recitals” and “Schedules” are to the clauses and recitals of and schedules to this MoU, as the same may be amended from time to time.

5. OBLIGATIONS AND RESPONSIBILITIES

- 5.1 Each Party agrees to nominate an Appointed Official, within one (1) calendar month of signing this MoU, to oversee the implementation, management and operation of the provisions within this MoU. Unless otherwise stated the Appointed Officials will have the authority to agree matters, as required in this MoU, on behalf of the Authority and the Customer.
- 5.2 A Party’s Appointed Official can change as and when required but the other Party must be informed of the change within three (3) working days.
- 5.3 The Appointed Officials, at least seven (7) calendar days before the commencement of each calendar month, will agree a working pattern for the coming month detailing the days and hours the Officer will deliver the Services. The work pattern will also set out any agreement for the Officer to deliver the Services away from the Premises. When agreeing monthly work patterns the Appointed Officials will aim for a consistent provision of Service whilst accepting sporadic variation over the length of the MoU.
- 5.4 The Appointed Officials will meet on dates to be agreed (at least quarterly), to discuss the monitoring of this MoU, the Officer’s performance, the delivery of the Services, the payment for the Services, production of Agreed Monthly Work Pattern documents, potential revisions to the MoU and wider strategic issues.
- 5.5 The day-to-day management of the Services will be led by the Customer but the Authority will retain substantive management of the Officer.
- 5.6 In the event of exceptional operational circumstances (including, but without limitation to, circumstances arising from an emergency or from a material disruption to the Authority processes or a Force Majeure Event) the Authority may temporarily suspend or reduce provision of the Service in part or in whole immediately.
- 5.7 Where the Authority and Customer agree to reduce or amend the provision of the Service, the Customer shall only be liable for the cost of the Service provided.

6. THE AUTHORITY’S OBLIGATIONS

Immigration Enforcement Checking and Advice Service – December 2019

- 6.1 For the duration of this MoU, the Authority shall:
- 6.1.1 Provide the Service described in Schedule 2 at the premises of the Customer and in line with the Agreed Monthly Work Pattern;
 - 6.1.2 Be responsible for the recruitment, employment, and training of those Officers required to deliver the Service;
 - 6.1.3 Ensure that the Officer has access to relevant Home Office databases, information, systems and to communicate information derived from these to effectively carry out the Service;
 - 6.1.4 Provide the Officer with the appropriate Laptop, Mobile Phone to effectively carry out the Service;
 - 6.1.5 Provide a mobile Wi-Fi device if the Customer is unable to deliver its obligations under Clause 7.1.9.

7. THE CUSTOMER'S OBLIGATIONS

- 7.1 For the duration of this MoU, the Customer shall:
- 7.1.1 Cooperate with the Authority in all matters relating to the Service;
 - 7.1.2 Ensure that the Officer is provided with a host manager, who will oversee and support the Officer, act as the primary point of contact for the Officer. The host manager does not have to be the same person as the Appointed Official;
 - 7.1.3 Provide the Authority with immediate feedback on any performance, conduct or attendance issues that come to light in order that they can be appropriately addressed and rectified by the Authority without delay to maintain the Service;
 - 7.1.4 Ensure that the Appointed Official or host manager monitors and authorises the Officer's Time Sheets on a monthly basis as set out in Schedule 3, Clause 3;
 - 7.1.5 Provide a safe and effective working environment for the Officer including induction in appropriate Health and Safety and Fire Evacuation procedures;
 - 7.1.6 Provide the Officer with access to; a desk, a chair, a phone, building pass, desk space that will not contravene data protection principles, secure personal storage facilities, changing facilities, relevant employees or contractors and customers;
 - 7.1.7 Provide the Officer with secure internet and/or Wi-Fi facilities to enable them to effectively provide the Service;
 - 7.1.8 Provide relevant training to the Officer in relation to the Customer's business, including but not limited to job-shadowing, to enable the Officer to fulfil the Service requirements;
 - 7.1.9 Agree to the provision of management information, as set out within the MoU Update Meeting document contained at Schedule 5, at each meeting (minimum of quarterly) between the Appointed Officials;

7.1.10 Provide management information and feedback on Time Sheets and Agreed Monthly Work Patterns at the meetings between the Appointed Officials in accordance with the parameters set out within the MoU Update Meeting document contained at Schedule 5;

7.1.11 With their express permission, agree to the Authority publishing management information pertaining to the services provided, specifically changes to caseload figures and financial savings made to further promote the Service to prospective partner organisations.

7.2 Payment for the Service will be made in accordance with Schedule 3.

8. STATUTORY OBLIGATIONS

8.1 This MoU, and the provision of the Service, does not relieve the Customer from any of its statutory obligations, nor can it form the basis of a defence or excuse where a law has been breached. For the avoidance of doubt this means this MoU does not:

8.1.1 limit, exclude or otherwise protect the Customer from any civil court action or criminal prosecution; or

8.1.2 limit, exclude or otherwise restrict the Customer from its obligation to comply with the law; or

8.1.3 limit or exclude the liability of either Party for death or personal injury caused by its negligence, or for fraudulent misrepresentation or fraudulent concealment.

9. CHARGES, LIABILITIES AND PAYMENT FOR THE SERVICES

9.1 The Parties agree that the provisions of Schedule 3 will apply to the financial arrangements between them for the provision of the Service

9.2 The provisions in Schedule 3 will apply only for the Service provided between the date of commencement of this MOU and the date of its termination

9.3 In consideration for the Service provided by the Authority, the Customer shall make payments to the Authority in accordance with the terms of Schedule 3.

9.4 The Authority's charges for the Service are set out in Schedule 3. The Authority reserves the right to vary from time to time any of its charges in any way it sees fit. Any variation will be subject to further Parliamentary approval. The Authority will provide the Customer with such notice as is reasonable in the circumstances of any variation in charges.

9.5 The Authority will give to the Customer such notice as is reasonable in all the circumstances of any variation in charges.

9.6 For the avoidance of doubt, charges incurred by the Authority that have been invoiced in accordance with Schedule 3 of this MoU are not refundable.

9.7 Except as otherwise provided, the Parties shall each bear their own costs, expenses, losses or liabilities incurred in complying with their obligations under this MoU.

10. SERVICES CONTINUITY

- 10.1 Unplanned absences: The Officer will be instructed to contact their host manager and their Authority manager if they are unable to attend work in accordance with the agreed monthly working pattern document, for example because of illness. The Authority will attempt to provide an alternative Officer. However, if no Officer is available the Service will not be provided. If no Officer can be provided to fulfil the Service the Customer shall not be liable for any costs for the time that the Service is unavailable.
- 10.2 Exceptional circumstance: Both the Authority and Customer agree the monthly work pattern document can be altered, by agreement of both parties, with three working day's notice where circumstance requires such amendments. Furthermore, in the event of exceptional operational circumstances the Authority may temporarily suspend or reduce the provision of the Service. In these circumstances the Customer will only be liable to pay for the Service based on the reduced number of hours provided.
- 10.3 The Customer's host manager will contact the Authority's Appointed Official if the Officer takes any unauthorised absences.
- 10.4 The Agreed Monthly Work Pattern will detail planned absences.

11. STATUS OF THE OFFICER

- 11.1 For the avoidance of doubt, the Officer remains the employee of the Authority and shall not become, or be regarded as, the employee, consultant, agent, sub-contractor or representative of the Customer. This MoU is not a contract of employment.

12. CONDUCT, DISCIPLINE AND SECURITY

- 12.1 The Officer will be subject to the provisions of the Official Secrets Act(s) 1911-1989 and section 182 of the Finance Act 1989 and the conditions and rules governing the conduct of civil servants. In particular, they will be required to observe rules governing political activities and the need to avoid situations that may lead to conflicts of interest.
- 12.2 The Officer will also remain subject to the Authority's conduct, discipline and grievance procedures, Authority policies and the standards of work and behaviour set out in the Civil Service Code. The Officer will be instructed additionally to observe the standards of work and behaviour set out in the Customer's Staff Handbook. In the event of any breach of these standards the Customer shall inform the Authority. In the event of any conflict between these documents the Civil Services Code and Authority policies will take precedence.

13. HEALTH AND SAFETY

- 13.1 The Customer has a Health and Safety Policy in which it accepts its responsibility under health and safety legislation and, so far as is reasonably practicable, the health, safety and welfare of all employees and other persons at its premises. The Customer therefore accepts its responsibility to ensure the health, safety and welfare of the Officer whilst providing the Service.
- 13.2 The Authority retains its obligations to the Officer as required by the Health and Safety at Work Act etc. 1974 and any subordinate legislation to that Act.

14. VARIATION

- 14.1 This MoU may be varied by written agreement between the Parties.

Immigration Enforcement Checking and Advice Service – December 2019

14.2 In the event that the Customer requires any variation to this MoU, the Authority shall provide on request details of the effect of such proposed variation on the Services and what adjustment(s), if any, would be required to the Hourly Rate or any other charges that may be applicable.

15. RIGHTS AND LIABILITIES

15.1 Any additional costs incurred should be agreed prior to commitment by the Parties.

16. LIMITATION OF LIABILITY AND INDEMNITY

16.1 Subject to Clauses 16.2 and 16.3 the Customer shall, during and after the term of the MoU, indemnify and keep indemnified and hold the Authority harmless from and against all actions, suits, claims, demands, damages, expenses, legal costs and other liabilities arising from or incurred as a result of or in connection with any breach of this MoU, except where any such claim arises from any act or omission of the Authority.

16.2 Nothing in this MoU shall operate to limit or exclude the liability of either Party for death or personal injury caused by its negligence, or for fraudulent misrepresentation or fraudulent concealment.

16.3 For the avoidance of doubt, the Customer shall not be liable to the Authority or its contractors or its employees or any other third party for any indirect costs incurred by the Authority unless such the costs are caused or contributed to by any act or omission or by the negligence or default of the Customer, its employees, agents, consultants or sub-contractors, or by any circumstances within the Customer or its employees, agents, consultants or sub-contractors control

17. FREEDOM OF INFORMATION REQUESTS

17.1 For the purposes of this clause:

17.1.1 "FOI Act" means the Freedom of Information Act 2000 and any subordinate legislation made under that Act or any guidance issued by the Information Commissioner;

17.1.2 "Information" means all records and information of any sort obtained, created, collected or held by the Authority and Customer in relation to this MoU; and

17.1.3 "Information Request" means a request for Information within the meaning of section 8 of the FOI Act.

17.2 Each Party accepts the other is subject to the FOI Act and agrees to assist and co-operate to enable each Party to comply with its obligations under the FOI Act.

17.3 Each Party may be obliged to comply with its obligations under the FOI Act without informing or consulting the other.

17.4 Notwithstanding Clause 17.3 above, each Party shall take all reasonable steps to inform and consult before responding to an information request and shall take into account any views expressed by the other Party. Where it was not possible to inform and/or consult the other Party in advance of a disclosure, it shall draw the disclosure to the other Party's attention after the event.

17.5 Without prejudice to Clause 17.2, each Party shall use reasonable endeavours to provide each other with any information necessary to enable them to answer an information request.

17.6 Should the Customer receive an Information Request which ought to have been addressed to the Authority it shall not attempt to process the request itself but shall within three (3) days return the request to the originator and instruct them to send it to:

Direct Communications Unit
2 Marsham Street
London
SW1P 4DF
e-mail: foirequests@homeoffice.gov.uk
copied to: IE-CAS@homeoffice.gov.uk

18. DATA PROTECTION LEGISLATION

18.1 Both parties agree that they will comply with all the requirements of Data Protection Legislation in relation to their obligations under this MoU.

19. DATA SHARING AND INFORMATION SECURITY

19.1 The parties shall comply with all their respective duties and responsibilities in relation to information sharing, data security and confidentiality as set out within this agreement.

19.2 The full data sharing and information security protocols are as described in Schedule 4.

20. CONFIDENTIALITY

20.1 Each Party on receiving information obtained in the course of the MoU or which may come into the possession of any of its employees, agents, consultants or sub-contractors as a result of or in connection with this MoU undertakes:

20.1.1 to treat as confidential all information which is specifically designated as such by the disclosing Party, except to the extent the receiving Party:

20.1.1.1 can show that such information is already in the public domain (other than by a breach of this MoU);

20.1.1.2 can show that such information was received without restriction on disclosure or use from a third Party lawfully entitled to make the disclosure to the receiving Party;

20.1.1.3 is authorised to disclose such information by any written agreement between the Parties;

20.1.1.4 is required by law to disclose such information; or

20.1.1.5 without limiting the application of Clause 20.1.1.4 is required to disclose information under the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time or the Environmental Information Regulations 2004.

20.1.2 to take all necessary precautions to ensure that all information is treated as confidential by its employees, agents, consultants or sub-contractors.

21. DIFFERENCES OF OPINION

21.1 Any difference of opinion between the Parties under this MoU will be referred in the first instance to the respective Appointed Officials for discussion within seven (7) days.

21.2 In the event that such discussions fail to reach a conclusion, then the issue will be referred to the relevant Director of each Party with fourteen (14) days.

Signed on behalf of the Authority

By

Name

Position

Date

Signed on behalf of the Customer

By

Name

Position

Date

SCHEDULE 1 – DEFINITIONS

“Agreed Monthly Work Pattern” means a working pattern for the coming month detailing the days and hours the Officer will deliver the Services as agreed by the Appointed Officials;

“Appointed Officials” means officials named by each the Authority and the Customer respectively to oversee the implementation, management and operation of the provisions within this MoU. Unless otherwise stated, the officials will have the authority to agree matters, as required in this MoU. Replacement officials will be appointed by the Authority and the Customer as and when required;

“Controller” means the person who determines the manner in which and purposes for which personal data are to be processed either alone or jointly in common with other persons as defined in the Data Protection Legislation;

“Data Protection Legislation” means the General Data Protection Regulation and the Data Protection Act 2018;

“Data Subject” has the same meaning as defined in the Data Protection Legislation, being an identified or identifiable natural person who is the subject of personal data;

“Force Majeure” means in the event that either Party is prevented from carrying out its obligations under the MoU as a result of any cause beyond its control (such as - but not limited to - acts of God, war and/or floods), that Party shall be relieved of its obligations and liabilities under the MoU for as long as such cause persists PROVIDED THAT both Parties shall undertake to resume normal performance of the affected obligations as soon as reasonably practicable;

“Hourly Rate” means the rate set out in clause Schedule 3;

“IECAS” means Immigration Enforcement’s Checking and Advice Service;

“MoU” means this Memorandum of Understanding;

“Officer” shall mean an appropriately trained Home Office member of staff provided by the Authority for the express purpose of providing the Services detailed at Schedule 2;

“Party” means the Authority or the Customer;

“Personal Data” means any information relating to a data subject who can be identified from it or data that can be put together with other information to identify a living individual. It covers data held in any format;

“Premises” means the Customer’s premises;

“Privacy Information Notice” means a publically available statement or document that sets out some or all of the ways a party gathers, uses, discloses, and manages a customer or client’s data. It fulfils a legal requirement to protect a customer or client’s privacy

“Process” has the same meaning as defined in the Data Protection Legislation and includes collecting, recording, storing, retrieving, amending or altering, disclosing, deleting, archiving and destroying personal data

“Processor” means any person who processes personal data on behalf of the Controller (other than an employee) as defined by the Data Protection Legislation;

“Service” shall have the meaning set out in Schedule 2;

“Time Sheets” mean excel documents used by the Officer to accurately record their hours of service at the Premises.

SCHEDULE 2 – SERVICES

1. The Services provided by the Officer, and charged for under this MOU, will be based on the Customer's corporate requirements at any given time in respect of an individual's eligibility to access benefits and services.

2. The Officer will work the following teams within the Customer's organisation; (Housing Needs; Homelessness and Immigration Team; Children's Services Leaving Care; Adult Social Care; Adult Mental Health services,

3. The services provided by the Officer will consist of the following functions: .

3.1 Where individuals or families approach the Customer for support or benefits under the following legislation:

3.1.1 No Recourse to Public Funds assessments in respect of Section 17 Children Act 1989;

3.1.2 Housing assessments and allocations under Part VI Housing Act 1996;

3.1.3 Homelessness assessments and support under Homelessness Reduction Act 2017 and part VI Housing Act 1996 .

3.1.4 Section 117 (Mental Health Act); .

3.1.5 Section 9 (Care Act) or Sections 6 and 7 (Housing Act);

3.1.6 Other relevant legislation; .

the Officer will conduct real-time immigration status checks to support the Customer's decision-making in relation to the individual's or family's eligibility for support or benefits, and advise on the implications of those status checks. This includes:

3.1.7 Maintaining effective front-line processes for families and individuals seeking support or benefits, primarily by providing immigration status information which aids the Customer to determine an individual's or family's eligibility to support, services, or benefits.

3.1.8 Inspecting immigration and nationality documentation provided by individuals and families seeking support, services or benefits to enable the Customer to determine whether an individual or a family is entitled to support or benefits.

3.1.9 Providing the Customer with an overview of voluntary returns information if appropriate.

3.2 The Officer will assist the Customer's teams listed in paragraph 2 of this schedule to periodically review its stock of cases by conducting immigration status checks on those individuals and families receiving support or benefits, and advising on those checks. These checks will be used by the Customer in determining whether individuals and families remain eligible for support or benefits.

- 3.3 The Officer will establish processes to enable the Customer to effectively manage, audit and review the Customer's team's cohort of cases on a periodic basis in relation to immigration status checking. The Officer will provide an audit report making appropriate recommendations for improvements.
- 3.4 The Officer will assist the Customer to use the NRPF Connect system effectively to maximise the resolution of outstanding queries and cases.
- 3.5 The Officer will assist the Customer in evaluating the effectiveness of the service at regular update meetings to be determined by the Customer.
- 3.6 The Officer will act as a single point of contact between the Customer and Authority teams to ensure expedient case progression on the part of the Customer and the Authority and thus mitigating the potential for delay through an active involvement in the diary management of the Customer's teams (listed in paragraph 2 of this schedule) cohort of cases.
- 3.7 In order to enable the Customer to be able to confidently understand and conduct immigration status checks themselves, as part of their service provision, the Officer will deliver appropriate immigration training to the Customer's employees and provide appropriate support to embed knowledge in response to recommendations set out in the audit report detailed in Schedule 2 paragraph 3.3. Where the Officer is unable to deliver specific training themselves they will work with the Customer to secure it. The Officer will deliver any training or support within their usual working pattern as agreed in Schedule 2 paragraphs 4, 5 and 6.
- 3.8 Where appropriate, the Officer will help facilitate the broader relationship between Customer and other Authority teams.
- 4 the Services will be provided at the Premises of the Customer for 200 days over the length of the MOU. (Specify days and times)
- 5 A days Service will constitute the Officer providing the Services for 7 hours 12 minutes per day, although fractions of days maybe agreed and charged at a proportional rate.
- 6 The Agreed Monthly Work Pattern can be altered, as required, by agreement of both Appointed Officials.
- 7 Subject to Schedule 2 Clauses 4 to 6 the Services will only be provided Monday to Friday, excluding public holidays. Number

SCHEDULE 3 – FINANCE

1. The Customer will be provided with [insert number of days required] Higher Officer (or equivalent) days for the duration of the MoU at an estimated cost of [insert estimated cost].
2. Based on the fees defined in the Immigration and Nationality (Fees) Regulations 2016, the hourly rate for the Services will be £58.20 at Higher Executive Officer rate/ £52.80 Executive Officer rate.
3. In reference to the Agreed Monthly Work Pattern document, as detailed at Schedule 2 Paragraph 4, the Officer will keep an accurate record of the hours they provided the Services to the Customer. These are recorded on the Time Sheet. On the second working day of each calendar month the Officer will e-mail the completed Time Sheet for the previous calendar month to the Customer's Appointed Official or host manager for authorisation. Once authorised and on the same day the Customer's Appointed Official or host manager shall e-mail the Time Sheet to the Authority's Appointed Official. This will be treated as confirmation and authorisation of the hours worked. The Time Sheet will be utilised by the Authority to raise an invoice.
4. Based on the hours of service provided by the Officer an invoice for payment will be raised and provided to the Customer by the Authority quarterly from the commencement of the MoU. The invoice will be sent to [insert Customer address for submission of the invoice]. This will be calculated by multiplying the number of hours used by £58.20/£52.80. The invoice will be paid by the Customer within 30 days of the receipt of the invoice.
5. In the event that other extraordinary costs are likely to be incurred, these will be agreed between the Appointed Officials.
6. The Customer is required to provide a PO number and invoicing details within seven (7) days of the MoU being signed. The PO number and invoicing details should be e-mailed to: IE-CAS@homeoffice.gov.uk

SCHEDULE 4 – PERSONAL DATA SHARING AND INFORMATION SECURITY

1. Introduction

- 1.1 Given the nature of the service provided this schedule combines the requirements of an umbrella memorandum of understanding and a process level memorandum of understanding in respect of the information sharing that will take place between the Parties.
- 1.2 Where anonymised information, pseudonymised information or non-personal information is shared, the recipient of that information will not attempt to re-identify any individual by analysing or combining it with other information which is in its possession at the time of receipt or subsequently comes into its possession.
- 1.3 This Schedule sets out the Personal Data sharing arrangement between the Authority and the Customer. It governs the exchange of information between the two Parties.
- 1.4 It ensures that information is shared with appropriate safeguards and in accordance with the law. Organisations which share information, particularly information that involves the sharing of Personal Data have a legal responsibility to ensure that the disclosure of information is both lawful and subject to adequate controls.
- 1.5 This Schedule aims to:
 - 1.5.1 set out the principles that will govern the sharing of information between the Parties including the onward disclosure of Personal Data to third parties;
 - 1.5.2 describe the processes, structures and roles that will support the exchange of information between the Authority and the Customer;
 - 1.5.3 set out the legal responsibilities which apply to disclosure and use of personal data having regard to the Data Protection Legislation;
 - 1.5.4 describe the data security protocols necessary to ensure compliance with Data Protection Legislation and any other specific security requirements;
 - 1.5.5 describe the process for managing Personal Data breaches.

2. Powers to Share Personal Data between the Parties

- 2.1 All information sharing must be compliant with legal obligations under Data Protection Legislation, any statutory data sharing powers and where relevant the Common Law Duty of Confidentiality.
- 2.2 The relevant legal bases to share information involving Personal Data between the Parties are set out below.
- 2.3 In addition to satisfying the conditions for processing data under the Data Protection Legislation there are a number of express powers and implied powers for sharing data between the Authority and the Customer:

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- 2.3.1 Section 36 of the Immigration Act 2006 and Section 21 of the Immigration Act 1999 both allow for the sharing of information held by the Home Office in connection with the exercise of functions under any of the Immigration Acts.
- 2.3.2 Schedule 3, Nationality, Immigration and Asylum Act 2002 (NIAA) provides an express power for data sharing between the Authority and the Customer specifically within Paragraph 14;
- 2.3.3 Section 20 (as amended by sec. 55 of the IA 2016) of the Immigration Act 1999 provides for these bodies to share Personal Data with Home Office for 'immigration purposes' as listed in the legislation;
- 2.3.4 Immigration legislation will impact on NRPF assessments undertaken, the nature of said assessments and the level of support that can be provided. Cases such as N v Coventry (2008) provides an example of a situation where the immigration status of a NRPF family or individual is a prerequisite for the assessment process;
- 2.3.5 Housing support is granted under Section 193 of the Housing Act 1996, Part VII as amended by the Homelessness Act 2002 and the Localism Act 2011. Following review checks, which include immigration status checks, entitlement to public funds would end under Section 184 of the Housing Act 1996, Part VII as amended by the Homelessness Act 2002 and the Localism Act 2011;
- 2.3.6 Section 47 of the Children Act 1989 places a duty on local authorities to make enquiries where they have reasonable cause to suspect that a child may be at risk of suffering significant harm. It states that the following authorities must assist with these enquiries if requested to do so; any local authority; any local education authority; any housing authority; any health authority; any person authorised by the Secretary of State;
- 2.3.7 Part 3 of the Children Act 1989 allows for local authorities to provide various types of support for children and families. Section 17 provides a general duty of local authorities to provide services for children in need in their area;
- 2.3.8 Section 10 of the Children Act 2004 places a duty on each children's services authority to make arrangements to promote co-operation between itself and relevant partner agencies to improve the well-being of children in their area. The statutory guidance states that good information sharing is key to successful collaborative working and that arrangements under this section should ensure that information is shared for strategic planning purposes and to support effective service delivery. It also states that these arrangements should cover issues such as improving the understanding of the legal framework and developing better information sharing practice between and within organisations;
- 2.3.9 The Children (Leaving Care) Act 2000 aims to help young people who have been looked after by a local authority move from care to independent living. In regards to those with NRPF these duties can continue until 21 or 24 years of age.

Data sharing between the Authority and the Customer within the period of leaving care duties is essential for the Customer to establish eligibility for support specifically in respect of the current immigration status of a former looked-after child;

2.3.10 Section 55 of the Borders, Citizenship and Immigration Act 2009 stipulates that immigration functions are discharged having regards to the need to safeguard and promote the welfare of children. It is vital that the Authority is informed of instances where there are safeguarding concerns for children or any relevant circumstances where children are supported financially by the Customer whilst carrying out its duties;

2.3.11 In the judgement of *Clue v Birmingham City Council* (2010) the need for data sharing between local authorities and the Home Office was recognised as a condition for resolving cases expediently.

3. Lawful Bases for Processing Personal Data in Accordance with Article 6 of the GDPR

3.1 In accordance with Article 6 of the General Data Protection Regulation a lawful basis is required for disclosing, receiving and further processing the information for each Party.

3.2 The lawful bases for the processing of Personal Data are:

3.2.1 legal obligation;

3.2.2 public interest;

3.2.3 legitimate interest.

4. Privacy Information Notices

4.1 Each Party will ensure that their respective Privacy Information Notice is sufficiently detailed to cover the information sharing activity including the purpose of the processing and the lawful basis for the processing.

4.2 Once individuals engage with the Authority they will receive a Personal Information Notice (PIN) when either applying for a visa, leave to remain, Asylum or when being served with a Red1 notice. Individuals also provide consent when first engaging with the Customer through a Conditions of Service (CoS) document

5. Third Party Processing

5.1 Should third parties be used to process any Personal Data the relevant Party must confirm that there are arrangements in place to ensure that the third party is compliant with Data Protection Legislation.

6. Data Protection Impact Assessment

6.1 The Parties will ensure that before any information sharing takes place in respect of this agreement that consideration is given as to whether a Data Protection Impact Assessment is required. This will help identify the relevant legal powers and assess the

benefits of the information sharing as well as identifying any privacy risks and how these might be mitigated.

- 6.2 The Authority has completed a Data Protection Impact Assessment in respect of the services provided by an on-site immigration official. The Authority has also completed a Data Protection Impact Assessment in respect of the utilisation of Connect.

7. Controller Status of the Receiving Parties

- 7.1 The Authority and the Customer will be joint controllers.

8. Purpose and Benefit of the Information Sharing

- 8.1 The purpose of data sharing between the Authority and the Customer is to facilitate the lawful exchange of data relating to the Customer's support provisions to individuals and families with no recourse to public funds (NRPF).
- 8.2 Joint working between the Authority and Customer is essential for resolving NRPF cases expediently. It is necessary to minimise the impact these cases have on the budgets of the Customer and the taxpayer.
- 8.3 The Customer's assessments and services for NRPF clients are dependent on knowing in detail a person's immigration status.
- 8.4 The sharing of data between the Authority and the Customer will ensure that outstanding immigration cases will be progressed as expediently as possible thus ensuring that the Customer can account for the associated costs to the taxpayer.
- 8.5 The information to be shared by the Authority and the Customer will be personal information about individuals with no recourse to public funds, including information about their dependants and will include sensitive personal data held by the Authority.
- 8.6 The sharing of information between the Authority and the Customer will enable the speedier resolution of cases thus saving the taxpayer money. It will help identify fraudulent claims. It will reduce the risk of poor case-working decisions being made where information is not being shared between the Authority and the Customer.
- 8.7 The Customer aims to reduce the timescales that NRPF cases remain supported by engaging with the Authority to resolve cases. The Authority can triage and prioritise cases based on factors such as the cost to the Customer or length of residence in the UK. The Customer can access real-time immigration status information from the Authority to ensure that cases are not being supported unlawfully or unnecessarily. The process will be expedited therefore saving time and money. The decision-making process will become more robust therefore ensuring the correct decision is made at the earliest opportunity. It will enable the identification of safeguarding issues.

9. Information to be Shared and the Systems the Information will be Derived from

- 9.1 The following type of Personal Data to be disclosed:

9.1.1 Name;

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- 9.1.2 Date of Birth;
 - 9.1.3 Nationality;
 - 9.1.4 Address;
 - 9.1.5 Immigration Status;
 - 9.1.6 Family Details;
 - 9.1.7 Evidence of employment;
 - 9.1.8 Immigration history;
 - 9.1.9 Health concerns.
- 9.2 The Personal Data will be drawn from the following sources available to the Authority:
- 9.2.1 Case Information Database (CID);
 - 9.2.2 CRS;
 - 9.2.3 DVA;
 - 9.2.4 Home Office files;
 - 9.2.5 Atlas
- 9.3 The information is necessary, appropriate and relevant as an individual's personal circumstances are a prerequisite for the Customer to undertake assessments and thus comply with their legal obligations. The Authority must also be informed of cases where child protection proceedings are in place as this will be highly relevant to any immigration decision. The Authority will also advise the Customer when casework decisions have been made as this will impact upon decision-making processes in respect of the issuance of services.
- 9.4 The sharing of Personal Data will take place on a daily basis in accordance with the requirements of the Customer.

10. Type of Information Sharing Activity

- 10.1 The Authority and the Customer will partake in a regular information sharing activity.

11. FOIA Requests

- 11.1 Freedom of Information Requests are covered at Clause 17 in the main body of this agreement.

12. Subject Access Requests (SAR)

- 12.1 Individuals can request a copy of all the information that either Party holds on them, by making a SAR. This may include information that was disclosed to that Party under this

agreement. Where this is the case, as a matter of good practice, the Parties will liaise with each other to endeavour to ensure that the release of the information to the individual will not prejudice any ongoing investigation/proceedings.

13. Handling of Personal Data and Personal Data Security

13.1 Parties will be deemed to be Controllers (as defined in the Data Protection legislation) and as such must ensure that information shared that involves the sharing of personal data is handled and processed in accordance with the Data Protection legislation. Additionally, the Parties must process the information being shared in compliance with the mandatory requirements set by Her Majesty's Government Security Policy Framework ("HMG SPF") guidance issued by the Cabinet Office when handling, transferring, storing, accessing or destroying information assets.

13.2 The Parties will ensure effective measures are in place to protect information in their care and manage potential or actual incidents of loss of information. By way of example without limitation, such measures may include:

13.2.1 information not being transferred or stored on any type of portable device unless absolutely necessary, and if so, it must be encrypted and password protected to an approved standard;

13.2.2 taking steps to ensure that all relevant staff are adequately trained and are aware of their responsibilities under the Data Protection legislation and this agreement;

13.2.3 access to information received by the Parties pursuant to this MoU must be restricted to employees on a legitimate need-to-know basis, and with security clearance at the appropriate level; and

13.2.4 the Parties will comply with the Government Security Classifications Policy (GSCP) where applicable:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/251480/Government-Security-Classifications-April-2014.pdf

14. Accuracy of the Shared Data

14.1 The parties will make reasonable endeavours to ensure that the information being shared is checked before disclosure for accuracy and relevance. The disclosing party will ensure data integrity. In the event that a party becomes aware of any inaccuracy or other defect in the information which has been disclosed it will notify the parties which disclosed the information.

15. Data Subject's Rights

15.1 Technical capability and procedures are in place to sufficiently comply with all the data subject's rights under the Data Protection Legislation. This includes the capability to identify, provide and erase personal data should either Party be legally required to do so.

16. Method of Information Sharing

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- 16.1 Information will be exchanged between Parties in a secure approved format, as approved by all Parties.
- 16.2 Parties will ensure that all information they transmit to each other will be marked with the appropriate security classification in accordance with the GSCP.
- 16.3 The method of exchange will be in accordance with the standards and benchmarks relating to the security of that transfer and in accordance with any applicable provisions of the Data Protection legislation, Cabinet Office and other HMG guidance.
- 16.4 The movement of information must be captured and collated through the use of the NRPF Connect application which is accessible on the GCSX network. This ensures that data classified as Official can be shared securely. The Authority already has a separate data-sharing agreement with the NRPF network.
- 16.5 Should the NRPF Connect network not be available or not appropriate to the type of case, the sharing of data is subject to further data protection protocols. The Authority utilises the secure GSI Network to share data. The Customer should ensure the provision of GSI or GSX e-mail addresses to enable personal data to be shared securely.
- 16.6 If this is not feasible the Authority and the Customer should agree on a platform to ensure the secure sharing of data. Other options include the anonymising of data or if personal data has to be shared it should be encrypted using a secure data transfer method such as MoveIT.

17. Retention and Destruction Schedule

- 17.1 Information will be held in line with existing Authority retention and disposal policies.
- 17.2 Parties undertake to keep information being shared securely stored with access restricted to personnel authorised to access the information.
- 17.3 Parties will have documented policies on the retention and destruction of shared information in accordance with the requirements of the Data Protection legislation and HMG Security Policy Framework. Where specific information sharing activities are entered into by the Parties; the retention period should be jointly decided and set out in the respective agreement for that information sharing activity.
- 17.4 Where an agreement has been terminated, the Parties will follow any procedure set out in the agreement in relation to the handling of information. If no specific provisions are decided, the Parties will co-operate to determine how the information shared between the Parties is handled.
- 17.5 Parties will retain and securely destroy shared information according to their own internal retention/destruction program/schedule in line with the Data Protection legislation and in accordance with HMG Security Policy Framework guidance.

18. Permitted uses of the Information

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18.1 Access to information will be restricted to authorised personnel from the Customer and the Authority who have:

18.1.1 the appropriate security clearance determined by their own organisation to handle the data (CTC for Authority employees), and

18.1.2 a genuine business need to access the information

19. Onward Disclosure to Third Parties

19.1 Parties will respect the confidentiality of the information being shared and will not disclose to third parties unless required to do so by law, or with the explicit consent of the other Party or as stipulated.

19.2 Unless otherwise stipulated within this agreement, any information shared as a result of this agreement, which then forms part of the permanent record of the receiving Party(s) becomes the responsibility of the receiving Party (s) under the terms of the Data Protection legislation.

19.2.1 Parties accept that the information shared as a result of this agreement may also be used to update their respective internal records. As Controller for that data, the receiving Party can onwardly disclose the information to third parties (this includes the sharing of Information with external contractors who are acting as Processors as on behalf of the Controller) subject to the following conditions being met

19.2.2 the Party wishing to make the onward disclosure must be satisfied that the information is only shared where it is necessary to carry out one of its own legitimate business functions and due regard must be had to any legal restrictions which may apply;

19.2.3 the Party wishing to make onward disclosure must be satisfied that the information is being shared lawfully and in accordance with any legal obligations that may apply, including those set out in the Data Protection legislation;

19.2.4 the Party wishing to make the onward disclosure must be satisfied that adequate security arrangements are in place for the transmission of the data to the receiving Party and that the receiving Party has adequate security arrangements in place for the secure storage of the information, and

19.2.5 where necessary a separate information sharing agreement should be put in place with the third party organisation setting out all of the above.

20. Personal Data Breaches

20.1 A personal data breach is a breach of security leading to the accidental or unlawful destruction, loss alteration, unauthorised disclosure of, or access to personal data transmitted stored or otherwise processed.

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- 20.2 Examples of serious personal data breaches may include:
- 20.2.1 accidental loss or damage to the personal data;
 - 20.2.2 damage or loss of personal data by means of malicious software/hacking;
 - 20.2.3 deliberate or knowingly disclosure of personal data to a person not entitled to receive the data;
 - 20.2.4 emailing classified/sensitive information containing personal data to personal email accounts;
 - 20.2.5 leaving classified/sensitive papers containing personal data in a unsecure or publicly accessible area;
 - 20.2.6 using social networking sites to publish information containing personal data which may bring either Party's organisations into disrepute.
- 20.3 The designated points of contact (Appointed Officials) are responsible for notifying the other Party in writing in the event of personal data breach within 24 hours of the event.
- 20.4 The designated points of contact will discuss and jointly decide the next steps relating to the incident, taking specialist advice where appropriate. Such arrangements will include (but will not be limited to) containment of the incident and mitigation of any ongoing risk, recovery of the personal data, and assessing whether the Information Commissioner and/or the data subjects will be notified. The arrangements may vary in each case, depending on the sensitivity of the personal data and the nature of the loss or unauthorised disclosure.
- 20.5 Where appropriate, and if relevant to the incident, disciplinary misconduct action and/or criminal proceedings may be considered.

SCHEDULE 5 – MANAGEMENT INFORMATION AND PERFORMANCE

1. The template below will be utilised at the review meetings between the Appointed Officials to assess the performance of the Officer.

IE Checking and Advice Service – MoU Update Meeting

Date / Time of Meeting	
Partner Organisation	
Attendees	

MoU Monitoring – Delivery of Services

<p>OSIO Performance¹</p> <ul style="list-style-type: none"> • Current Caseload (+ / - since commencement of agreement or last meeting (whichever is more recent)) • Savings incurred (since commencement of agreement or last meeting (whichever is more recent)) • OSIO attendance and time-keeping • Strategic Influence 	
IT & Equipment ²	

¹ Provide update on Key Performance Indicators for period since last meeting and YtD update. Also provide update on OSIO behaviours

² Observations on IT in accordance with MoU monitoring

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Actions to Take Forward	
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Monthly Work Patterns ³	
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OSIO Attendance Update ⁴	
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Invoicing and Fees ⁵	
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Signed Timesheets – Action Taken ⁶	
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Contract Update ⁷	
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Overall MoU Adherence – Y/N	
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AOB	
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³ Update on Monthly Work Patterns – submission and adherence

⁴ Provide running total of days attendance v. MoU

⁵ Are fees and invoices up to date?

⁶ Timesheets to be signed and returned to IE Office for scan / e-mail

⁷ If meeting takes place within 3 months of contract expiry date discuss renewal and make form plans

Roles and Responsibilities

As an OSIO your roles and responsibilities may vary depending on the specific needs of the organisation you're located in. However, all roles will centre on conducting immigration status checks and advising on the implications of those checks whilst ensuring GDPR compliance. This will then enable partner organisations ensure that they have all the relevant information to make their decisions on access to work, benefits and services.

You will be expected to take a strategic approach to your work, using Home Office systems to provide immigration updates and advice to partner organisations. You may also be required to assist partners with process and procedural improvements in areas such as their interactions with migrant communities and fraud checking procedures. To achieve this, you will need to be able to operate independently, drive forward projects with limited support or oversight and undertake (where required) a leadership function within partner organisations to deliver agreed outcomes.

OSIOs need to be flexible and able to build strong relationships quickly in partner organisations. Strong analytical and excellent communication skills are essential, as is a focus on immersing themselves quickly in new organisations, getting to the root of issues and delivering change and maximum value for that organisation. The successful candidate will need to be comfortable working independently and away from Home Office colleagues. As a representative of the Home Office within a partner organisations OSIOs need to exemplify ISD and Civil Service values and demonstrate a positive approach to working in ever changing environments.

It is important to note that the roles and functions may change over time as new partners with different objectives are brought on stream.

For the majority of assignments OSIO responsibilities are as follows:

- Proactively identify ways of improving host organisations' processes, procedures and systems so they can meet their wider operational and strategic objectives from an immigration perspective;
- Deliver training to staff based at your partner organisation to improve their knowledge of immigration and the measures contained within the Immigration Acts in relation to access to work, benefits and services, Voluntary Returns Services and immigration documentation fraud;
- Complete audits of existing processes to gauge compliance with immigration legislation and complete highlight reports outlining the key audit findings;
- Attend regular engagement meetings with their local authorities, and provide progress reports detailing successes and areas for improvement;
- Establish and manage productive working relationships with organisations and stakeholders;

- Support the host organisation analyse its immigration needs and / or customer demographic, offering advice and working with the organisation to develop a coherent plan;
- Maintain records to inform performance management and contract reviews;
- Establish and build relationships with teams across the Home Office to ensure efficient delivery of services to the public;
- Undertake specific work (corporate, policy or operational) during periods when not embedded in an organisation to support the wider delivery of the programme and operations of Immigration Enforcement, such as providing training to external organisations.

Appendix C

Interview schedule (policy experts and homelessness practitioners)

- What services does your organisation provide/what does your organisation do/what is your role and level of experience?
- What proportion of your service users/the people your organisation supports do you estimate to be non-UK nationals?
- What proportion of your service users/the people your organisation supports do you estimate to be at risk of rough sleeping?
- What proportion of your service users/the people your organisation supports do you estimate are rough sleeping?
- In your experience, what personal and/or social factors make it more likely that a person will be at risk of rough sleeping, and why?
- Are you able to share any relevant statistics?
- What support is available for non-UK nationals who are or who are at risk of rough sleeping? Do you think it is sufficient?
- In your experience, what impact have policies targeting non-UK national rough sleepers for immigration enforcement had on your service users/the people your organisation supports and the support you are able to provide?
- What effect do you think the changes to the Immigration Rules to make rough sleeping grounds for refusal/cancellation of leave to remain will have on:
 - a) Your work;
 - b) The people you support
- Are you able to share any anonymised case studies of people who may be affected by the recent changes to the Immigration Rules to make rough sleeping grounds for removal/cancellation of leave to remain?

Appendix D

Briefing note from Liverpool Law Clinic on impact of Rough Sleeping Rule on people eligible to make statelessness applications

Stateless persons, Part 14 leave, and the general grounds of refusal as laid 1st December 2020

Note prepared by Judith Carter of Liverpool Law Clinic in consultation with other representatives

17.12.2020

I've been asked by Public Interest Law Centre to write a note about the effect that Part 9 general grounds for refusal may have on decision making under Part 14 of the immigration Rules. I draw from the caseload of several practitioners. In brief, if the general grounds are applied to the applicants we know of, it is likely that several would have been or will be refused Part 14 leave. We have not yet seen grants of Discretionary Leave to stateless people refused Part 14 leave, but that seems to be the only category of leave that they will be eligible for.

The note sets out:

1. explanation of Part 14 leave
2. comparison of conditions under Part 14 and Discretionary Leave (DL)
3. explanation of how the general grounds directly affect stateless people
4. some example scenarios from our caseload

1. Explanation of Part 14 leave

Part 14 was laid in April 2013 and provides for a grant of leave to be made to a person who:

- a) is recognised to be stateless under the definition in customary law and in the 1954 UN Convention on the Status of Stateless Persons, which the UK has ratified; (para 401)
- b) is not excluded from recognition due to exclusion criteria (broadly similar to those in the 1951 Convention) (para 402)
- c) fulfils certain procedural criteria (para 403)

d) can evidence to the standard of balance of probabilities that they are not admissible, for the purposes of permanent residence, to any other country (para 403 (c))

e) does not fall foul of the 'danger to public order/security' Rule (para 404(a))

f) does not fall foul of any of the general grounds (para 404(b))

The policy instruction on Statelessness Leave v 3 of November 2019

(https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/843704/stateless-leave-guidance-v3.0ext.pdf) sets out the reason for the procedure:

In April 2013, the UK incorporated a new procedure under the Immigration Rules to allow stateless persons to be formally determined as stateless and granted leave to remain **where they have no other right to remain under the rules** but cannot leave voluntarily or be removed from the UK because they have no right of permanent residence in their country of former habitual residence or in any other country. (my highlight – emphasis that this is meant to be a 'last resort' application).

The policy acknowledges that stateless people may be discriminated against, but not meet the persecution definition, in their country of origin. It states:

Possession of nationality is considered essential for full participation in society and a prerequisite for the enjoyment of the full range of human rights. Stateless people are not necessarily at risk of persecution or serious harm in their country of habitual residence, but they are potentially vulnerable to serious discrimination. They may, for example, be denied the right to own land or exercise the right to vote. They are often unable to obtain identity documents. They can be denied access to education and health services or blocked from obtaining employment.

We note that our clients often suffer exactly the same problems in the UK as they did in their country of origin. Their years long struggle to have their condition of statelessness recognised in the UK takes places while they live in exactly the conditions described above.

This is the stated policy intention:

Policy intention

The underlying policy objectives in providing a route for stateless persons and in considering applications are to:

- provide a means for considering if someone is stateless and assist those unable to return to their country of former habitual residence because they are stateless and have no right of residence there, to ensure we comply with our obligations under the UN Stateless Conventions
- provide a means for stateless persons in the UK who cannot obtain admission to any other country for the purposes of permanent residence, to access their basic human rights by granting them leave to remain in the UK as part of our efforts to address wider global issues facing stateless persons
- tackle abuse from those who are not stateless but make an application in an attempt to frustrate legitimate removal action and ensure that criminals and those who are a threat to our security do not benefit from generous stateless leave

(NB the HO use of the word stateless instead of statelessness is incorrect: only people can be stateless, not guidance nor leave nor a Convention).

2. Comparison of conditions under Part 14 and Discretionary Leave or DL

The grant of leave under Part 14 is, since April 2018, for 5 years. Previously there were two grants of 30 months. There is access to:

- Homelessness assistance
- Student loans (once the 3 yr residence criterion is fulfilled)
- Access to public funds
- Employment
- Stateless Person's Travel Document
- Family reunion for minor children, spouse, partner in the UK or abroad
- ILR after 5 years, providing they still comply with the requirements in paras 401-404

The DL conditions do not include any of the above benefits, except employment and, usually, access to public funds.

Although the policy is mis-stated on the public facing website, the fact is that a stateless person with any form of leave may apply for a Stateless Person's Travel Document. It will cost more, because, instead of having a grant of 5 years, the 30 months grant of DL means that they may have to apply for the document more often.

Surprisingly, for stateless persons, there is no 'facilitated access' to naturalisation - contrary to the obligations set out in the 1954 Convention. It is possible for a stateless 5-year-old

born in the UK to register as British but that is not relevant to the general grounds. Nevertheless, under Part 14, with a route of 5 years plus one year ILR, the person is very likely to fulfil the criteria for naturalisation between one and 5 years earlier than a person with two or four successive grants of 30 months DL followed by ILR (if the person ever becomes eligible).

The application for leave to remain under Part 14 is free. It is not clear whether a person applying for repeated grants of DL will have to pay fees, apply for a fee waiver, or be able to apply again under Part 14 with a free application.

3. How the general grounds affect stateless people

The general grounds, Part 9 of the Immigration Rules, laid on 1st December 2020, includes the following policy and Rules which are relevant to Part 14 decisions:

Decisions on suitability are either mandatory (must) or discretionary (may) and must be compatible with the UK obligations under the Refugee Convention and the European Convention on Human Rights, which are mainly provided for under other provisions in these Rules.

This policy obviously omits from exemption those stateless people who ought to be protected under the UK's international obligations under the 1954 Convention. The Home Office maintains that statelessness is not a 'protection category' and therefore applicants do not benefit from any of the policy or procedural safeguards afforded to asylum seekers and refugees. For example, there is no right to legal aid in England and Wales, apart from ECF; there is no statutory right of appeal; there is no automatic entitlement to support while a determination is pending; there is no right to an interview about the application; and the general grounds apply in their entirety.

The general grounds already included reasons which should not be applied to a stateless person – for example, failing to comply with previous maintenance and accommodation conditions. Another that is relevant is an NHS debt.

The 2018 guidance to caseworkers on the general grounds is still available. I'm not sure what its status is. It states:

If you only refuse on general grounds and an appeal is allowed, you cannot then reconsider them for the specific category and leave to remain will have to be given.

You must consider if there are any human rights grounds such as:

- the right to family life under article 8 of the European Convention on Human Rights (ECHR)
- any exceptional, compelling circumstances which would justify you granting the application

The lack of a right of appeal for Part 14 means that the instruction (if still valid) to grant following an appeal even if one of the general grounds applied, is redundant so the stateless person does not benefit.

The instruction to consider Art 8 ECHR and any 'exceptional, compelling circumstances' following a refusal under Part 14 has been contested by the Home Office and in particular it has repeatedly, consistently and explicitly refused to consider Art 8 when refusing Part 14 applications (and also trafficking applications – see case of MY v SSHD).

I would argue that, although a right to a residence permit is not explicit in the 1954 Convention, where a stateless person has already proved, to the standard of balance of probabilities, that they are both stateless and not admissible elsewhere – that is, they are impossible to remove – it would not be in the spirit of the 1954 Convention to refuse the enhanced statelessness leave. I don't think it would be arguable that a refusal would be a disproportionate measure, since DL provides the protection against a breach of Art 8. That argument might depend on which general ground is being applied.

The rough sleeping rule states:

Rough sleeping in the UK

9.21.1. Permission to stay may be refused where the decision maker is satisfied that a person has been rough sleeping in the UK.

9.21.2. Where the decision maker is satisfied that a person has been rough sleeping in the UK any permission held by the person may be cancelled.

This measure, if applied according to its wording to Part 14 applications, and applying to people who **have** rough slept in the UK, is likely to result in a good proportion of refusals. It is documented that stateless people tend already to be living marginalised lives, both in their country of origin and in the UK (see numerous publications, for example UNHCR 2018 on stateless people in SE Europe <https://data2.unhcr.org/en/documents/download/68577>).

Even if the rule is applied to people who **are** rough sleeping in the UK, this would still have caught one of our clients; and many more were constantly appealing s4 decisions even while their applications were pending with the Statelessness team, at least until about 2015.

4. Examples of our clients' situations

Practitioners have collated some brief records of their clients' situations before they were recognised as a stateless person (there is one in our records who is waiting for a determination). We immediately found 10 clients (of about 60-70 records available to us now) who had lived on the streets at some point.

Many of our clients are failed asylum seekers who have been living without support for some years, or who have made fresh claims and gone in and out of s4 accommodation. Some are or were supported as sofa surfers with the well-known problems attached to that informal and dependent situation. The majority of our first clients (2013/2014) had had either periods of street living or immigration detention. They lived on the streets both before and after the statelessness procedure was introduced, and before and after making asylum claims. One received a police caution for pitching his tent on private property before he made an asylum claim.

Since about mid 2015 (from memory), where applicants have s4 support and have submitted a Part 14 application, the Home Office has tended not to withdraw that support until the application has been determined. That means until the point that any AR has been considered and refused, or one has not been made, or there has been a grant of leave. In 2020 the s4 team required a copy of the submitted Part 14 application before they would withdraw their decision to end support.

We started assisting people with applications under Part 14 in autumn 2013. The first grants of leave were in 2015 and 2016. They were initially for 30 months. In April 2018 initial grants were for 5 years. We are now working on cases where the 30-month cases are either ready to renew, or 5 years' leave is about to be completed and we are assisting in ILR applications.

When we prepare our clients cases credibility may be at issue; there are often many aspects of the applicant's history which did not need to be explored in the context of an asylum claim so are entirely missing from the history; and there is often a long history of failed fresh claims, failed removals and precarious living since the first asylum claim was made. We have often submitted detailed statements about the applicant's situation, pointing out street homelessness as an indicator of the inability of the applicant to leave, and as

evidence of marginalised living. Therefore, these statements are on the applicants' files already.

We now need to advise our clients that they could be refused Part 14 leave because, while stateless and unable to leave the UK, they suffered the indignity and misery of living on the streets. I don't relish having to explain this perversion of justice to a client who is already unable to change their situation and has come to this type of application as a last resort – as required by the HO policy.

There is an inconsistency in providing a reason for discretionary refusal to stateless people and also providing them a form of leave which allows them to access homelessness assistance. That addition is recent and deliberate.

We don't have consents to provide details of these clients. If it is necessary we can see if any are willing to give consent. At present I have practitioners' answers (without checking very carefully, and without checking all our historic records) about particular clients where we remembered that they may have been street homeless at some point. We have done this by looking back at statements that were available to us. Checking through all historic records would require more resources than we have available in the short term.

In January 2021 a UNHCR report is to be published detailing the experiences of 12 people in the Part 14 application procedure. That was written with client consent.

Judith Carter

17.12.2020

Appendix E

Interview schedule (individuals at risk of rough sleeping)

- What were the circumstances that led to you sleeping rough or being at risk of rough sleeping?
- What help was available to you? What role did your immigration status play?
- What effect do you think the changes to the Immigration Rules to make rough sleeping a ground for refusal or cancellation of permission to be in the UK will have/would have had on your ability to or willingness to access support to resolve your homelessness/reduce your risk of rough sleeping?
- Is there anything you want to add?