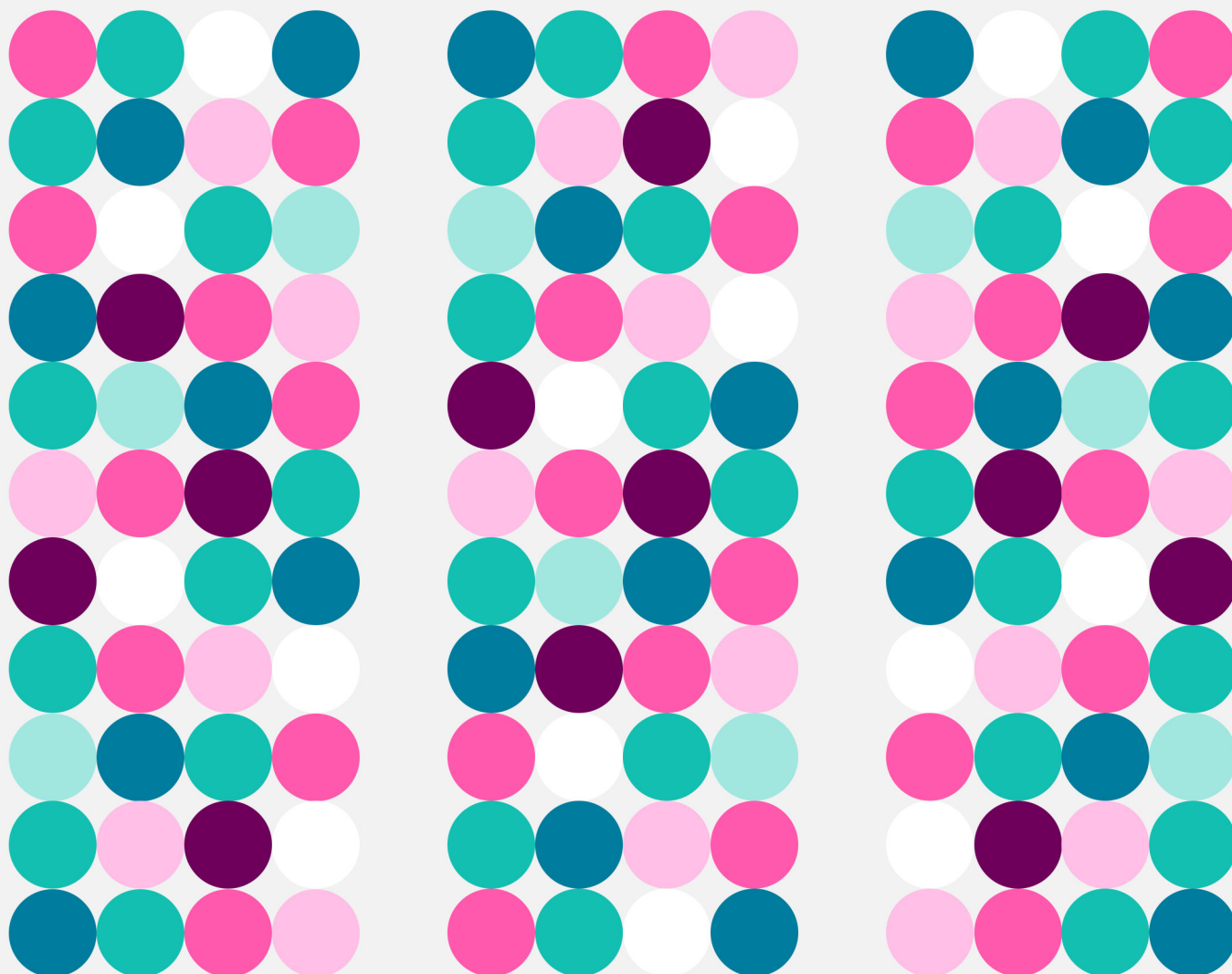


Unlocking the door

A roadmap for supporting non-UK nationals facing homelessness in England



Appendix 3

Guidance note: Public funds and accommodation for rough sleepers with restricted eligibility

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Produced with the support of the Law Centres Network on behalf of Homeless Link.

Appendix 3

Introduction

Providing accommodation to rough sleepers with restricted eligibility remains a significant challenge for local authorities. This guidance will explore the types of funds that are unavailable to such persons, and propose options available to authorities who wish to continue to support this client group while remaining within the law.

The government has continued to emphasise its goal of ending rough sleeping by the end of this Parliament. The experience of the Everyone In scheme during the COVID-19 pandemic showed that this should be an achievable goal. However, it also demonstrated that success depends on new ways of working, and utilising broad legal powers to accommodate vulnerable groups. This reality is even more fundamental where the aim is to end rough sleeping in the long-term, and not just for a finite period.

As such, rough sleeping should not be viewed solely as a housing problem, but as a public health problem. Doing so will serve not only to take into consideration the wider context of homelessness, but will also open up previously neglected powers that can be used to accommodate people with restricted eligibility.

Several such powers have been discussed in other recent guidance¹, and those powers remain important tools for authorities. The present guidance will focus on two particular powers, namely section 2B of the NHS Act 2006 and section 180 of the Housing Act 1996 which, under certain broad conditions and circumstances, allow local authorities to fund and/or provide support and accommodation to non-UK nationals with restricted or unclear eligibility for public funds.

It is hoped that this guidance will help authorities understand what funding is or may be available for accommodation, and moreover, to encourage the adoption of new models for the provision of accommodation to people with restricted or unclear access to public funds.

Homelessness and health

The link between homelessness in general, and rough sleeping in particular, and poor health has been well documented. A 2017 report published by the Local Government Association provides several examples, including the following²:

- Up to 70 per cent of homeless young people have mental health problems, and 33 per cent self-harm.
- Common mental health issues (eg depression and anxiety) are more than twice as prevalent amongst people experiencing homelessness, and psychosis is up to 15 times as common when compared to the general population.
- Infectious diseases including hepatitis C, HIV, and tuberculosis are significantly more common amongst people experiencing homelessness.

1. Bernardi, D. (2021) Exhaust All Options: Local authorities' powers to accommodate beyond the Housing Act 1996. London: Law Centres Network.

2. Leng, G. (2017). The Impact of Homelessness on Health: A guide for local authorities. London: Local Government Association.

- Life expectancy amongst people experiencing homelessness is 47 years, as compared 77 years for the general population.

This in turn creates a greater burden on health and social care budgets and the NHS. By preventing and alleviating homelessness, authorities can help address these problems.

What are 'public funds'?

Public funds are defined under section 115 of the Immigration and Asylum Act 1999³, and paragraph 6 of the Immigration Rules⁴.

Section 115 IAA 1999 includes the following:

- Universal credit
- Income-based jobseekers' allowance
- State pension credit
- Income-related employment and support allowance
- Personal independence payment
- Attendance allowance
- Severe disablement allowance
- Carer's allowance
- Disability living allowance
- Income support
- A social fund payment
- Health in pregnancy grant
- Child benefit
- Housing benefit

Paragraph 6 of the Immigration Rules includes the above, as well as the following:

- Housing under Part VI (allocations) and Part VII (homelessness) of the Housing Act 1996, and under Part II of the Housing Act 1985
- Council tax benefit and/or a council tax reduction
- Child tax credit and working tax credit
- A discretionary payment made by a local authority under section 1 of the Localism Act 2011, not including any payment made under the Energy Rebate Scheme 2022

This is an exhaustive list of all funds that are considered public funds, and accordingly any benefit or service

3. Immigration and Asylum Act 1999, s.115. Available at: <https://www.legislation.gov.uk/ukpga/1999/33/section/115>

4. The Immigration Rules, paragraph 6. Available at: <https://www.gov.uk/guidance/immigration-rules/immigration-rules-index>

not listed in section 115 or paragraph 6 is not a public fund for immigration purposes⁵.

Accordingly, the restriction on homelessness assistance applies only to assistance under Part VII Housing Act 1996, and so services provided to people experiencing homelessness outside of Part VII (and not included in the above lists) will not constitute a public fund. In local homelessness and rough sleeping settings, this could include support and accommodation provided parallel to or in advance of statutory thresholds, such as rough sleeping pathways or prevention, early help and advice in community and outreach settings, for example. However, in order to provide these services, authorities must utilise existing powers set down in statute.

Section 2B NHS Act 2006

All local authorities have a duty to improve the health of people in their area. Where an authority determine that a particular step is appropriate to improve public health, they must take that step.⁶ The provision of accommodation, including to persons with restricted eligibility, is a valid step to be taken under section 2B.⁷ Additionally, authorities can provide grants or loans, for example to local homelessness charities, for that same purpose.

This power has been used during the course of the COVID-19 pandemic, most notably under the Everyone In scheme. Such decisions were made in the context of a national emergency in order to save lives. In the longer-term, it will be necessary for local authority public health departments to make such decisions, even though it would likely be housing departments who provide the accommodation.

An example of this in practice may include a public health department completing a Joint Strategic Needs Assessment (JSNA) on the topic of homelessness. A JSNA is a report that looks at the specific health and social care needs of our local population and points out areas of inequality. It helps public bodies decide what type of local services to commission. If a JSNA, or other such report, were to recommend that accommodating the local rough sleeping population would improve public health in the area, then this could justify utilising section 2B to do so.

Section 180 Housing Act 1996

This section of the 1996 Act empowers local authorities to give assistance by way of a grant or loan to voluntary organisations concerned with homelessness or matters relating to homelessness.

The term 'voluntary organisation' is defined within section 180 as 'a body (other than a public or local authority) whose activities are not carried on for profit'. This would of course include the charitable sector. The section applies not just to organisations concerned with homelessness, but also matters relating to homelessness. The fact that both terms are used suggests that the scope is broad. This may include, for example, charities whose work addresses common needs of rough sleepers, rather than (or in addition to) homelessness directly. In other words, this section would not be restricted to organisations that already

5. Home Office (2021) Public Funds: Migrant access to public funds, including social housing, homelessness assistance and social care, v18. London: Home Office

6. Explanatory Note to the Health and Social Care Act 2012, section 12, para 130 (referring to s.2B NHS Act 2006). Available at: <https://www.legislation.gov.uk/ukpga/2012/7/notes/division/5/1/2/2>

7. R (Ncube) v Brighton and Hove City Council [2021] EWHC 578 (Admin) at para 74. Available at: <https://www.bailii.org/ew/cases/EWHC/Admin/2021/578.html>

provide accommodation for rough sleepers.

In addition to grants and loans, section 180 lists other forms of assistance that authorities can provide to voluntary organisations. These are:

- a. permitting them to use premises belonging to the authority,
- b. making available furniture or other goods, whether by way of gift, loan or otherwise, and,
- c. making available the services of staff employed by the authority.

The section 180 power is not subject to any immigration-based restrictions, and so assistance can be provided to voluntary organisations specifically for the purpose of providing accommodation to people with restricted or unclear eligibility.

Conclusion

As can be seen, the above powers are broad and versatile. The section 2B power is qualified in the sense that it must be linked to public health, however it should not be difficult to justify its utilisation as described above. The section 180 power includes no such justification, and so it is open to local authorities to provide such grants and loans as they see fit.

Viewed in this way, it becomes clear that authorities have at their disposal the tools needed to take increasingly progressive approaches to homelessness and rough sleeping.



Homeless Link



This document has been produced as part of a partnership project between Homeless Link and the No Accommodation Network (NACCOM) with funding from Lloyds Bank Foundation for England and Wales.



About Us

Homeless Link is the national membership charity for frontline homelessness services. We work to improve services through research, guidance and learning, and campaign for policy change that will ensure everyone has a place to call home and the support they need to keep it.

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