



Briefing Note: Extension to the Healthy Start Scheme to British Children under the age of 4 from NRPF families

This note explains a recent legal claim which has resulted in the extension of the Healthy Start Scheme to British children under the age of 4 from NRPF families who meet the financial criteria to claim welfare benefits.

The note will address what the Healthy Start Scheme is, the recent extension of the eligibility criteria and the current ex gratia scheme the Department for Health and Social Care has implemented so that families can begin accessing support as soon as possible.

Background

The Healthy Start Scheme aims to reduce child poverty and health inequalities by providing free vitamins, nutritional advice and weekly vouchers of £4.25 to buy nutritious food or infant formula to low income families with pregnant women and children up to the age of 4. It is intended to benefit those in the “*greatest need*”.

However the trigger for qualifying to receive this support was a parent's entitlement to social security benefits. It therefore excluded some of the UK's poorest children in the UK from migrant backgrounds because their families had no recourse to public funds (“NRPF”) and are therefore unable to claim mainstream benefits. As a consequence babies and toddlers from the most financially deprived households were going without the nutritious food and vitamins needed for a healthy start in life.

The judicial review challenge

Matthew Gold & Co were instructed to challenge the eligibility criteria set out in the Healthy Start Scheme and Welfare Food (Amendment) Regulations 2005.

The claim was brought on behalf of Child “A”, a British Citizen who is 1 year old, and her mother. Her mother had a lawful right to reside in the UK but had been expressly prohibited by UK law from claiming welfare benefits and therefore Child A could not benefit from the Healthy Start scheme. The Claimants' household income was almost 40% less than what families claiming welfare benefits, and therefore eligible for the Healthy Start scheme, would receive. On this income the family struggled to afford a healthy and nutritious diet.

In December 2020 Matthew Gold & Co issued judicial review proceedings challenging the eligibility criteria for the scheme on a number of grounds, including that it was indirectly discriminatory against children and mothers from Black and Ethnic Minority backgrounds, breached their human rights and was inconsistent with the intended purpose of the scheme.

In February 2021 the High Court decided these grounds were arguable and granted permission for the challenge to proceed to an expedited final trial.

Outcome

Prior to the hearing, the Secretary of State conceded the claim, agreeing to extend the eligibility criteria and to hold a consultation.

As a result, **all British children under the age of 4**, whose parents *would* meet the financial criteria to claim welfare benefits, but are unable to do so as a result of their immigration status (or lack of immigration status), will now be entitled to support provided under the Healthy Start Scheme.

The Regulations will be amended and a consultation reviewing the broadening of the scheme will take place this winter.

The Secretary of State has also agreed to implement an ex gratia scheme whereby newly eligible NRPF families can claim the support whilst the changes to the Regulations are implemented.

The precise terms of settlement have been incorporated into a sealed court order which is available on our website.

How can families claim support now?

The Department for Health and Social Care ("DHSC") are still in the very early stages of setting up the ex gratia scheme. However have now set up an email address whereby eligible NRPF families can submit claims for the ex gratia support:

Healthystartclaim@dhsc.gov.uk

We have requested confirmation as to what evidence and supporting documentation should be provided with the initial request but the DHSC have stated they are unable to provide any further information at this stage.

We are encouraging as many newly eligible NRPF families as possible to submit claims to this email address now so that any issues with the ex gratia scheme can be identified and remedied as a matter of urgency and families can begin receiving the support as soon as possible.

What to include with the claim

We would suggest the initial request email clearly set out the following information:

1) Identification information:

Names, dates of birth and address of parent(s) and child(ren) (and any confirmation that can be provided of identity e.g.: birth certificates, photo ID, confirmation of address/DOB etc.);

2) Details of the family's financial situation:

It is currently unclear what evidence the DHSC will required in order to assess the financial eligibility for the ex gratia scheme. However, we suggest the initial email provides clear information setting out the amount of income the family receive and how often (weekly/fortnightly/monthly etc.) and, where possible, provide evidence of income. For example, if the family are in receipt of section 17 support, a letter from the Council confirming

this would be useful. Where parents may have Leave to Remain with NRPF and are working, pay slips will be helpful to include.

3) **Confirmation of the British citizenship of the child(ren) [Where possible]**

At this stage the extension only covers British NRPF children under the age of 4 therefore providing confirmation of citizenship will be useful as part of the initial claim.

Providing proof of citizenship may be difficult for younger children/infants where potentially they have not yet received their passport. Where this is the case we suggest providing alternative evidence such as the birth certificate and confirmation of the parents' citizenship which may be accepted. Currently we are of the view that just because a child does not yet have their passport does not mean they should be excluded from receiving the support, as we are aware it can take some time for passports to be obtained (which is time that these families will be missing out on the support).

As stated above, the ex gratia scheme is currently in the very early stages and how exactly the administration of the scheme will work is currently unknown. However we are encouraging as many NRPF families with British children under the age of 4 who meet the financial criteria, and charities supporting these families, to submit claims on their behalf as soon as possible so that any issues in administering the scheme can be identified and remedied.

We will ensure to provide further information in relation to the running of the ex gratia scheme and the upcoming consultation as soon as this is available. In the meantime we are interested in hearing from others in relation to their the experiences in submitting claims to the scheme and any issues that arise.

For further information

For further information about the claim, or if families run into issues in relation to submitting claims to the ex gratia scheme, please do not hesitate to contact Olivia Halse (Olivia@matthewgold.co.uk) or Clare Jennings (Clare@matthewgold.co.uk).

Matthew Gold & Company Solicitors
30 June 2021