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## Section 17 of the Children Act 1989

Section 17 of the Children Act 1989 imposes a general duty on local authorities to safeguard and promote the welfare of 'children in need' in their area.

To fulfil this duty section 17 gives local authorities the power to provide support, including accommodation and financial subsistence to families with 'children in need',<sup>1</sup> even if they have no recourse to public funds. The power under section 17 can be used to support the family as a whole and to promote the upbringing of the child within the family unit.<sup>2</sup>

### *Establishing eligibility for support*

#### 1. Which local authority should you approach?

Physical presence in the local authority's area is all that is needed to trigger the section 17 duty. You should approach the local authority with which your child has the greatest connection. This could be the local authority where you live, or where the children go to school. In some cases, your child might have a connection to more than one local authority (e.g. live in one area and go to school in another). In such cases, you can approach either local authority.<sup>3</sup>

If your family is already receiving support from one local authority, you should approach that authority regardless of where you live.

#### 2. Are the children 'in need'?

The definition of 'in need' in the Children Act is very broad: a child will be 'in need' if they cannot achieve or maintain a reasonable standard of health or development. A child will also be in need if they are disabled.

All children have needs that must be met by other people, but for the purposes of section 17(10) of the Children Act 1989, a child 'in need' has needs that will not be properly met unless social services provides support.

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<sup>1</sup> See section 17(3) of the Children Act 1989

<sup>2</sup> See section 17(1)(b) of the Children Act 1989

<sup>3</sup> See *R v Wandsworth LBC ex p Sandra Stewart* [2001] EWHC 709 (Admin)

A child whose family does not have adequate accommodation or sufficient income to meet their essential living needs will almost certainly be 'in need'.

### 3. A 'power' or a 'duty'?

If your child is assessed as being 'in need', the local authority can provide support to your family.

The local authority has a *duty* to support children 'in need' in their area, but only the *power* to support an individual child. This means that the local authority can take into account other concerns when deciding whether to provide support, e.g. if they are facing budget cuts and cannot afford to help.

However, in some cases this 'power' can become a 'duty'. A power will become a duty where a failure to provide support would breach your human rights under the European Convention on Human Rights (ECHR).

This could happen if your family:

- Does not have adequate accommodation and does not have means of securing adequate accommodation, or
- Does not have enough money to meet your basic living needs<sup>4</sup>

If a child is destitute, this is likely to constitute a breach of Art 3 ECHR (right to freedom from torture or inhuman or degrading treatment)<sup>5</sup>

There could also be other breaches of ECHR, such as if your family is unable to live together even though you are not homeless. For example, your child could be staying with a friend from school and you are staying with a relative because there is no way of being together. In this situation, there may be a breach of Art 8 ECHR (right to a private and family life) even if you are not destitute.

Where a local authority's power becomes a duty to support, it *has* to act in order to safeguard and promote the welfare of an individual child.

### 4. Am I excluded due to immigration status?

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<sup>4</sup> See section 95 of the Immigration and Asylum Act 1999

<sup>5</sup> See *R (on the application of Limbuela) v Secretary of State for the Home Department* (2005) UKHL 66, (2006) 1 AC 396

Some adults are excluded from accessing support under section 17 because of their immigration status.<sup>6</sup>

#### *Schedule 3 exclusion -*

If you fall into one of the following categories, you are excluded from accessing support by schedule 3 of the Nationality, Immigration and Asylum Act 2002, unless the situation is so serious that a failure to provide support would breach human rights.

The excluded categories are:

- Granted refugee status by another EEA state
- Refused asylum seekers who have failed to cooperate with removal directions
- People in the UK in breach of the immigration rules (except asylum seekers). This means:
  - Present in the UK without a right of abode or leave to enter/remain
  - Not exempted from the need to have leave (e.g. diplomats, forces personnel)<sup>7</sup>

#### *Section 122 exclusion -*

If you are an asylum seeker who is eligible for support under section 95 of the Immigration and Asylum Act 1999 you are excluded from accessing cash and accommodation under section 17 of the Children Act 1989.

You are likely to be eligible for section 95 support from the Home Office if you are destitute and you have a pending asylum application or appeal, or you have been refused asylum but you had children before your asylum claim was refused.

If you have a disabled child in your household, you may be able to access support under section 17 for their care needs. However, you will not be able to access cash or accommodation.<sup>8</sup>

Social workers do not always understand a person's immigration status and therefore may wrongly conclude that you are subject to the Schedule 3 or Section 122 exclusion.

### **5. Are there any exceptions to this exclusion?**

If you fall into one of the categories of people excluded by schedule 3 (above), you may still be able to access section 17 support if failing to provide support would breach your rights under the European Convention of Human Rights ("ECHR").

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<sup>6</sup> See section 54 and schedule 3 of the Nationality, Immigration and Asylum Act 2002

<sup>7</sup> See *R (AW) v Croydon LBC* [2005] EWHC 2950 (Admin)

<sup>8</sup> For more information on the relationship between asylum support and section 17 view our factsheet: <https://www.project17.org.uk/media/121768/Asylum-Support-and-Section-17-Sept-22.pdf>

Where there are no alternative forms of support, your family is not able to leave the UK, and your family is destitute, failure to provide support may:

- amount to ‘inhuman or degrading punishment’ contrary to Article 3 of the ECHR or
- amount to an unjustified interference with their right to a private or family life contrary to Article 8 ECHR.

In such cases, you will not be excluded by Schedule 3.

## **6. Can the local authority avoid breaching human rights by advising or assisting return to the country of origin?**

If you are excluded by schedule 3, your local authority will consider whether any human rights breach could be avoided by returning your family to your country of origin. If they can discharge their duty in this way, long-term support will not be provided. The local authority will carry out a ‘human rights assessment’ which will look at whether there are any practical or legal barriers to your return. If no legal or practical barrier has been identified, the local authority should also consider for itself whether returning your family to your country of origin would breach your human rights.

### *Practical barriers*

In some cases, the only barrier to your return may be a practical obstacle such as being unable to afford the airfare, or not owning a passport. You can also show that you are unable to return to your country of origin if you are in the late stages of pregnancy, or have a serious medical condition that prevents travel. However, the local authority could offer to provide support until you are able to fly or assist with the financial cost of return. They may also provide support on a temporary basis while you engage with a voluntary returns programme.

### *Legal barriers*

If you are waiting for the Home Office to make a decision on an application for leave to remain (that is not hopeless or abusive) based on human rights grounds then social services cannot advise that you return to your country of origin.<sup>9</sup> Similarly, if you are appealing against an immigration decision (and the appeal is not hopeless or abusive) or proceeding with a judicial review, then there is also a legal barrier to your return.

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<sup>9</sup> See *R (Clue) v Birmingham CC* [2010] EWCA Civ 460

Where there is a barrier to your family's return, the local authority will not be able to discharge its duty by advising or assisting your family to return to their country of origin. They will have to provide support.

If no legal or practical barrier has been identified, the local authority should consider for itself whether returning your family to your country of origin would breach your human rights.

If no barriers, or human rights breaches, are identified and your family does not want to return to your country of origin and refuses the local authority's assistance, the local authority can discharge its duties under s.17 and avoid breaching your family's human rights without providing support. If this refusal results in the continued destitution of a child, this may be a safeguarding concern and the local authority may look into care proceedings for the child.

## *Procedure*

Section 17 support is normally provided by the social services department of the local authority. However, some local authorities have special teams set up to deal with section 17 support. These are usually called the NRPF Team or the Nil Recourse Team, but the structure varies between local authorities.

Support under section 17 is accessed via an assessment. First, the local authority should assess whether your child is in need, and then take a decision about what services to provide if the assessment concludes that your child is in need.

## *The assessment*

You or your representative, can request a Child in Need assessment by approaching the social services department or NRPF Team of the relevant local authority. The local authority **must** carry out the assessment if they believe that your child may be in need.<sup>10</sup> This is a relatively low threshold and social services can only refuse to assess if there is no realistic prospect that your child is in need.

The local authority should decide what type of response is required and acknowledge the request within one working day. They should then carry out the assessment in a timely fashion appropriate to the urgency of the situation. The maximum time limit for completing the assessment is 45 working days, but should a social worker identify a particular need they should not wait until the end of the assessment before commissioning services.<sup>11</sup> If your family is facing destitution or street homelessness, an assessment is likely to be required urgently.

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<sup>10</sup> See *R(G) v Barnet LBC* [2003] UKHL 57

<sup>11</sup> See para 83 of the *Working Together to Safeguard Children* guidance, 2018

If you are unable to provide enough information (such as information about where you have previously stayed, who has provided support, and why support can no longer be provided) to demonstrate that the children are in need, social services may conclude that it has no power to provide support.<sup>12</sup>

If you may be excluded under schedule 3 of the Nationality, Immigration and Asylum Act 2002, social services may also carry out a further human rights assessment.

## ***Interim support***

In urgent cases local authorities are able to provide support on a 'without prejudice basis' pending the outcome of their assessment. If this is required, you should let the local authority know what date support will be needed (e.g. the date you will become homeless) and ask for the assessment to be completed by this date. Or, if it is not possible to complete the assessment within this timeframe, for support to be provided on a without prejudice basis until the assessment is completed.

## ***Requesting an assessment***

There is a template referral form available [here](#).

We recommend that you go to the local authority in person. If you are working with a professional (at a charity, school, GP etc) you can ask them to write a supporting letter confirming your situation.

If possible, you can ask a representative or professional to accompany you to ask for support. This may give you confidence and they can make a note of what is said during the meeting.

To help the local authority conduct their assessment it is important that you provide as much evidence as possible, and you are open and honest with the local authority.

Below is a list of some of the evidence your client might be able to provide. Where possible, original documents should be provided. Sometimes things get lost, so it is a good idea to make a list of the documents given to the local authority.

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<sup>12</sup> See *MN and KN v Hackney LBC* [2013] EWHC 1205 (Admin) and *R(O) v Lambeth LBC* [2016] EWHC 937 (Admin)

Ask them to make copies and return the originals to you. If the situation is very urgent, you should go to the local authority straight away, even if you do not have all the relevant documents.

#### *Financial information:*

- 6 months' bank statements
- 6 months' payslips
- P45/P60
- Child Benefit letter
- Child Maintenance letter
- Letters confirming support from friends and family (if limited/irregular/temporary say so)
- Letters from professionals confirming financial situation (charities, GP, health visitor, school, church, mosque)
- Income/expenditure breakdown
- Bills
- Letters confirming debts

#### *Housing information*

- Letter from the person you live with. If you have been asked to leave, say when
- Letters from professionals confirming housing situation (charities, GP, health visitor, school, church, mosque)
- Tenancy agreement
- Rent account showing arrears
- Notice to quit
- Possession order/warrant

#### *Employment*

- If job-hunting, copies of applications/rejection letters
- Contract of employment
- 6 months' payslips

#### *Immigration*

- Biometric Residence Permit (BRP)/visa
- Home Office letter acknowledging your application
- Confirmation of appeal
- Evidence of judicial review
- Letter from immigration adviser
- Passports

#### *Health*

- Medical letters
- Prescriptions
- Hospital discharge letters

### *Domestic violence*

- Police reports
- Social services letters
- MARAC letters
- Letters from domestic violence support workers or other professionals

### ***During the assessment***

It is very important that you provide as much information as possible to enable the local authority to carry out their assessment. However, the process can be intrusive and unpleasant. Any resistance may be used by social services as refusal to cooperate with the assessment and could later be used as a reason to refuse support.

You can ask the social worker for their name and contact details so you can stay in touch with them. During the assessment, you can also take note of what is said as this may be useful later.

### ***Following the assessment***

You should ask the social worker what the next steps are and when you will be given a decision. Any decision should be given in writing, and you should ask for a copy of the child in need assessment.

### ***Reviewing support***

#### *Financial support -*

The amount provided should not be less than section 4 asylum support rates, which are currently £45 per person per week.<sup>13</sup> It is possible to challenge subsistence that is lower than this, and sometimes possible to challenge subsistence that is higher if your family has specific needs that result in higher costs, e.g., if your transport costs are very high because your accommodation is far from your child's school.

#### *Accommodation -*

If the accommodation is very poor quality, you can request a visit from an environmental health officer from to assess the property. If they conclude the property is unfit, then this is a compelling tool to getting improved accommodation. You can also check if the property meets the test for statutory overcrowding.<sup>14</sup>

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<sup>13</sup> As of February 2023: <https://www.gov.uk/asylum-support/what-youll-get>

<sup>14</sup> [https://england.shelter.org.uk/housing\\_advice/repairs/check\\_if\\_your\\_home\\_is\\_overcrowded\\_by\\_law](https://england.shelter.org.uk/housing_advice/repairs/check_if_your_home_is_overcrowded_by_law)



If the support provided is inadequate or unsuitable, you should request a fresh assessment stating why this is necessary. If social services refuse to undertake a fresh assessment or carry out a new assessment but do not change the level of support, then you may need legal advice from a community care solicitor.<sup>15</sup>

You can find template letters on [our website](#) that you can use to challenge inadequate support.

## ***Challenging social services decisions***

There are often delays in carrying out assessments and providing decisions. Assessments are sometimes inaccurate, and decision-making can be of poor quality. Once support is provided, it is sometimes inadequate to meet the needs of the child or individual.

There are two ways of challenging decisions from the local authority:

- Judicial review
- Complaints

### *Judicial review -*

Judicial review is a legal procedure that enables the court to assess whether the local authority has acted lawfully.

The local authority is required to act fairly, reasonably, rationally and in accordance with its statutory duties and human rights obligations. If it fails to do this, any decision taken by the local authority can be challenged by judicial review.

This is likely to be the most appropriate way to challenge decisions to refuse support or to provide inadequate support. A successful judicial review is likely to remedy the situation relatively quickly and may also result in the local authority improving its practice or policies in the future.

Judicial review must be brought promptly, within three months of the date of the decision, although in many cases the threat of homelessness and extreme poverty will mean that you will need to take action much more quickly.

Judicial review can only be undertaken by a solicitor. You should contact a public law or community care solicitor for advice. It's important to get a community care solicitor to take

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<sup>15</sup> <https://find-legal-advice.justice.gov.uk/>

judicial review as if you don't you will be liable for the costs if you lose. If you are destitute, you should qualify for legal aid, so you will not have to pay for a solicitor to bring a challenge.

### *Complaint –*

Making a complaint can be an effective remedy for issues that have now been resolved, such as a previous delay in carrying out an assessment. However, complaints tend to take a long time to be determined, so if the matter is urgent and ongoing, complaining is unlikely to be the best way to address the issue.

Most local authorities' complaints procedures are explained on their websites. If you are still unhappy after having gone through the complaint's procedure, you can refer the matter to an Ombudsman.<sup>16</sup>

For more information on making complaints, see our resources and template letters on [our website](#).

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<sup>16</sup> <https://www.lgo.org.uk/>