



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'¹, 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 unit².

Establishing eligibility for support:

1. Which local authority should the family approach?

The family should approach the local authority with which the child has the greatest connection. This could be the local authority where they live, or where the children go to school. In some cases, a 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, the family can approach either local authority³.

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

If the family is homeless and has no connection with any area, the relevant legal test is one of 'physical presence'. A family can be physically present in the area where they most recently stayed.

Note that the 'local connection' test often applied in mainstream housing and homelessness cases is not relevant in s.17 cases.

2. Are the children 'in need'?

¹ See section 17(3) of the Children Act 1989

² See section 17(1)(b) of the Children Act 1989

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

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

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. Does the local authority *have* to provide support?

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

The local authority has a *duty* to safeguard and promote the welfare of children in general within its area. However, it does not have a duty towards any individual child in need. Instead, in the first instance it has a *power* to support any individual child, and a *duty* towards children in need in general. This means that the local authority must use its discretion when deciding whether or not to provide support to an individual child in need. It can take other things into account when making this decision, like its own resources.

However, in some cases the local authority may lose its discretion and have to provide support to a family with a child in need in order to safeguard and promote the welfare of an individual child.

The local authority will lose its discretion where a failure to provide support would breach rights under the European Convention on Human Rights).

This could happen in a number of situations, but you are most likely to encounter this where a failure to provide support would leave the family destitute. This means the family

- Does not have adequate accommodation and does not have means of securing adequate accommodation, or
- Does not having enough money to meet its basic living needs⁴

If a child or vulnerable person is destitute, this is likely to constitute a breach of Art 3 ECHR⁵.

There could also be other breaches of ECHR, such as where a family is unable to live together even though they are not homeless. For example, a child could be staying with a friend from

⁴⁴ See section 95 of the Immigration and Asylum Act 1999

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

school and the mother is staying with a relative because they no way of being together. In this situation, there may be a breach of Art 8 ECHR (right to a private a family life) even if they are not destitute.

4. Are the adults excluded due to immigration status?

Some adults are excluded from accessing support under section 17 because of their immigration status⁶. If a parent falls into one of the following categories, they 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
- Citizens of other EEA states
- 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 entitled to remain in the UK under EEA treaties
 - Not exempted from the need to have leave (e.g. diplomats, forces personnel)⁷

Immigration status can be complicated and local authorities may wrongly conclude that a parent is subject to the Schedule 3 exemption. This is frequently the case in respect of “Zambrano carers” who are lawfully resident in the UK under EU law even if that right has not yet been recognised by the Home Office.

5. Are there any exceptions to this exclusion?

If the adults in the family falls into one of the excluded categories (above), they may still be able to access section 17 support if failing to provide support would breach a person’s rights under the European Convention of Human Rights (“ECHR”) or EU law.

Where there are no alternative forms of support, the family is not able to leave the UK, and the 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.

⁶ See section 54 and schedule 3 of the Nationality, Immigration and Asylum Act 2002

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

In such cases, the adults 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 the adults are excluded by sch 3 NIAA, local authorities will consider whether any human rights breach could be avoided by returning the family to their country of origin. If they can discharge their duty in this way, long-term support will not be provided.

In some cases, the only barrier to the family's return may be a practical obstacle such as being unable to afford the airfare. If this is the case, the local authority could offer to provide support to meet the costs of return, or provide support on a temporary basis while the family engages with a voluntary returns programme.

Local authorities may have to help a family in the longer term where there are legal or practical barriers that prevent a family returning to the country of origin. This could be the case where, for example:

- The family is 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 grounds⁸; or
- The family is appealing against an immigration decision (and the appeal is not hopeless or abusive) or proceeding with a judicial review; or
- The family can show that they are unable to return to their country of origin (e.g. they are in the late stages of pregnancy, or have a serious medical condition that prevents travel)

Where there is a barrier to the family's return, the local authority will not be able to discharge its duty by advising or assisting the 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 the family to their country of origin would breach their human rights or their rights under European law. Usually the local authority will undertake a further assessment (frequently called a 'human rights assessment') to establish whether any exceptions to the restrictions exist.

⁸ See *R (Clue) v Birmingham CC* [2010] EWCA Civ 460

If no barriers to the family's return exist, the local authority can offer to assist them to return. If they cannot return immediately (for example because they do not have passports or travel documents) the local authority may have to provide accommodation or financial support while these obstacles are overcome.

If the family does not want to return to their country of origin and refuses the local authority's assistance, the local authority can discharge its duties under s.17 and avoid breaching the family's human rights without providing support.

Note that if the family has leave to remain or is otherwise not excluded by sch 3 NIAA, the local authority should not conduct a human rights assessment.

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 the child is in need, and then take a decision about what services to provide if the assessment concludes that the child is in need.

The assessment

A family, or their 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 the child may be in need⁹. This is a relatively low threshold and social services can only refuse to assess if there is no realistic prospect that the 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 days but should a social worker identify a particular need they should not wait until the end of the assessment before commissioning services¹⁰. If the family is facing destitution or street homelessness, an assessment is likely to be required urgently.

⁹ See *R(G) v Barnet LBC* [2003] UKHL 57

¹⁰ See paras 58 & 60 of the *Working Together to Safeguard Children* guidance, 2015

If the family fails to provide enough information to demonstrate that the children are in need, social services may conclude that it has no power to provide support¹¹. This can include providing information about where they have previously stayed, who has provided support, and why support can no longer be provided.

If the parents 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 or your client should let the local authority know what date support will be needed (e.g. the date they 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

We recommend that you fill out a referral form and that your client goes to the local authority in person. There is a referral template available at www.project17.org.uk.

If possible, it can be helpful if you (or a colleague) goes with your client to ask for support. This may help give your client confidence. You can also make a note of what the officers say, and if an assessment is refused, you can advocate on your client's behalf.

To help the local authority conduct their assessment it is important that your client provides as much evidence as possible, is open and honest with the local authority and does not hold back information.

A list of some of the evidence your client might be able to provide is available at www.project17.org.uk. 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.

If the situation is very urgent, your client should go to the local authority straight away, even if they do not have all the relevant documents.

¹¹ See *MN and KN v Hackney LBC [2013] EWHC 1205 (Admin)* and *R(O) v Lambeth LBC [2016] EWHC 937 (Admin)*