



Risks to accessing support

There are some risks associated with accessing support from the local authority under section 17. It is important to be mindful of the following issues when exploring local authority support as a possible option.

Contacting the Home Office

The local authority has a duty to inform the Home Office that they have been approached for support¹. This may cause problems for people who have failed to comply with removal directions or those who have no leave to remain and no outstanding applications.

Some local authorities have embedded Home Office enforcement officers within their NRPF Teams. We are aware that individuals often feel intimidated when faced with a Home Office worker at the local authority. However, if your client has a barrier to their return to their country of origin, they are not at risk of removal. Further, Home Office policy also states that the Home Office does not detain children².

Faster immigration decisions

The Home Office may expedite immigration decision-making for people supported by the local authority. If the claim is strong, this could lead to a positive result, but for weak claims it could lead to a quicker refusal.

Offering to fund travel to country of origin

If your client has no outstanding immigration application and there are no human rights grounds for remaining in the UK, the local authority should look at practical reasons why your client cannot return to their country of origin.

If the only barrier is a lack of funds and/or lack of a passport, the local authority may offer only temporary support while they arrange return to the country of origin. If your client refuses to return and there are no legal reasons why they need to remain in the UK, the local authority may discharge its duty.

¹ See schedule 3 of the Nationality, Immigration and Asylum Act 2002

² See Home Office *Enforcement Instructions and Guidance* Chapter 45

Offering to take a child into care

Social Services sometimes offer to take a child into care instead of providing support to the family as a whole under section 17. This is likely to be unlawful if the family are asking to be provided with accommodation together and there are no safeguarding concerns for the child beyond the destitution the parents are seeking support for. Parents are fully entitled to refuse any such offer but it may make them anxious and less confident about continuing to ask for accommodation for the family together. It's important that parents have specialist advice and are prepared for what to expect before they approach social services wherever possible. Parents can also take a friend or advocate to the meeting with social services.

Broadly, they can only take children into care if :

The parents or others with legal responsibility for the child consent (S.20 Children Act 1989) (Consent must be informed and genuine, not coercive. They do not have to agree. If they do agree, they can withdraw that agreement at any time)

The court has made a care order or emergency protection order giving the council the legal right to remove a child

The Police decide to remove a child they think is in danger, in an emergency, without a court order, for up to 72 hours only.

Section 17 of the Children Act 1989 also requires councils to support children being brought up within their own families, as long as that is consistent with their other duties to protect children and promote their welfare.

However, if there is no legal or practical barrier to the family's return to their country of origin, and they refuse to accept support to return home, the local authority can lawfully say they have discharged their duty to the child under section 17 and refuse to support the family beyond that. If this means that the child is homeless or destitute, this could raise safeguarding concerns and it is possible that this could trigger child protection procedures, including under section 47 Children Act 1989.

Asking the other parent to provide support

In some cases lone parents requesting support under section 17 have been told that the other parent should look after the child. This has happened even when domestic violence has been acknowledged. This can be a particular risk for those applying for recognition as Zambrano carers (EU right to reside as the primary carer of a European national), because a suggestion from the local authority that there is another parent able to look after the child could lead to refusal of the immigration application by the Home Office. However, depending on the facts of the case and the best interests of the child, this approach may be unlawful. We would recommend challenging seeking legal advice about challenging such a recommendation.

Being moved out of the area

Particularly if a family approaches a local authority in London, it is possible that, if the local authority offers accommodation support, it will be outside of the local area. In some cases, it may even be outside of London. Having children in school is not usually grounds for a family remaining in their local area.

However, if the children are in an exam year at school (e.g. taking their GCSEs) or there are significant medical reasons why they should remain in the area, it may be possible to make a case for a family to be provided with accommodation within the borough.

Personal questions

The assessment process will explore all different aspects your client's life, including immigration, housing, finance, health, relationships and child development. Your client needs to be prepared to answer intrusive and personal questions. They should be prepared to be open and honest and provide any evidence requested. It is very important that they provide as much information as possible to enable the local authority to carry out their assessment. However, the process can be intrusive and unpleasant.