



"In the night  
we didn't know  
where we were  
going"

### **Project 17's 'Hotel Fund':**

Provision of emergency accommodation to families left street homeless following a local authority refusal of support under Section 17 of the Children Act 1989

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# Executive Summary

Destitute migrant families with 'no recourse to public funds' (no access to mainstream welfare benefits or social housing) face significant challenges to accessing statutory support under section 17 of the Children Act 1989 (s.17). This law should provide a vital 'safety net' to children whose families are not able to access mainstream homelessness support or benefits. At a time of austerity and increased hostility towards migrants, Project 17 has found that local authorities are frequently failing to meet their duties under s.17 Children Act 1989 by refusing to provide accommodation or financial support, leaving migrant children homeless or without enough money to meet essential needs.

For the past year, Project 17 has operated a 'Hotel Fund' as part of a project funded by the Network for Social Change, to provide emergency accommodation to families left street homeless following a refusal of s.17 support.

This report recounts the experiences of the families who have benefitted from the Hotel Fund and investigates the material and psychological impact on children and families left street homeless by refusals of local authority support. We explore the difficulties faced by families seeking to challenge local authority refusals, and the costs to local authorities in defending such challenges, which can run into tens of thousands of pounds.

As part of this project, we raised our concerns regarding the risks posed to children left street homeless by five local authorities (London boroughs of Southwark, Lewisham, Lambeth, Greenwich and Bexley). We found that all but one of the local authorities (Bexley) refused to acknowledge that children's safety and wellbeing had been put at risk in the cases where we provided emergency accommodation due to the lack of s.17 support.

We also raised concerns about the costs incurred to local authorities in defending legal challenges against these refusals. Of the local authorities who responded, there was a reluctance to accept that this expenditure was problematic.

The 'Hotel Fund' has proved an important resource in safeguarding families left homeless by wrongful refusals of support. However, we recognise that we have only been able to assist a small proportion of families affected by these decisions. There is extensive work to be done in getting local authorities to recognise that the risks posed to children are unacceptable.

## 1. Project 17

Project 17 is an organisation working to end destitution among migrant children. We work with families with 'no recourse to public funds' (NRPF) who are experiencing exceptional poverty, to improve their access to local authority support.

We believe that all children have the right to a home and enough to eat, regardless of their parents' immigration status. To achieve our vision, we provide advice, advocacy and support for individuals. We also build capacity in other organisations and we undertake campaigns and lobbying work for the improved implementation of statutory support.

More information about our work can be found at [www.project17.org.uk](http://www.project17.org.uk).

## 2. Network for Social Change funding for emergency accommodation

The provision of accommodation is not normally within Project 17's remit, as we are a small organisation and with very limited resources. However, in March 2017 Project 17 was awarded funding from the Network for Social Change, to provide emergency support to NRPF families left street homeless as a consequence of local authorities refusing to provide support under s.17. This was in response to Project 17's experience of families regularly being refused support despite the fact that they presented with an urgent need for accommodation.

As a result of the funding provided by the Network for Social Change, Project 17 has been able to pay for three nights' emergency accommodation for families while refusals of support were challenged. In exceptional circumstances, this could be extended to five nights' accommodation.

## 3. 'No recourse to public funds'

Project 17 specialises in support options for families with 'no recourse to public funds'. NRPF is a legal restriction that prevents some people from accessing non-contributory welfare benefits and social housing (public funds). The NRPF restriction applies to people who are 'subject to immigration control', meaning non-EEA nationals, who meet one of the following conditions:

- Needs leave to remain in the UK, but does not have it; or
- Has leave to remain, but is subject to a no recourse to public funds restriction
- Has leave to remain on a maintenance undertaking
- Is waiting for the outcome of an appeal

Those with a 'Zambrano' right to reside are also excluded from accessing public funds. A person will have a Zambrano right to reside if they are the primary carer of an EEA national (including a British national), and the European national would be unable to remain the European Union if the carer were to leave. This is a substantive right under EU law, which means it does not depend on the Home Office granting a right to reside.

## 4. Section 17 of the Children Act 1989

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

To fulfil this duty s.17 gives local authorities the power to provide support, including accommodation and financial support to families with 'children in need' (s.17(3) Children Act 1989), even if they have no recourse to public funds. The power under s.17 can be used to support the family as a whole and to promote the upbringing of the child within the family unit (s.17(1)(b) Children Act 1989).

The local authority must use its discretion when choosing whether or not to provide support to an individual family, but it can take other things into account when making this decision, like its own resources. However, in very serious situations where a refusal to provide support would breach human rights, the local authority loses its discretion and it *has* to act in order to safeguard and promote the welfare of an individual child.

This could happen in a number of situations, including 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 needs

If a child or vulnerable person is destitute, this is likely to constitute a breach of Art 3 ECHR (as per *R (on the application of Limbuela) v Secretary of State for the Home Department* (2005) UKHL 66, (2006) 1 AC 396).

## 5. 'Gatekeeping'

Through the course of our work, Project 17 encounters widespread poor practice and unlawful decision making by local authorities. Our clients experience NRPF teams within local authorities using tactics we believe are designed to put them off asking for support. These include:

- Threats to take children into care
- Families wrongly informed that they are not eligible for support
- Attacking parents' credibility
- Aggression and racism deterring families from seeking support

Families that do manage to access a s.17 assessment despite these barriers face an intense, intrusive and sometimes gruelling process which, our research shows, is often primarily focused on the credibility of the parent rather than the welfare of the child. Refusals of support are commonplace and initial decision-making is generally poor.

## 6. Challenging negative decisions

There is no statutory right of appeal against a refusal of s.17 support as with, for example a benefits decision. Therefore families often face difficulties challenging negative decisions.

As a refusal of support under s.17 is a decision of a public body and as there is no other available remedy, an individual may apply to bring a claim for a judicial review of the decision. To do this, they must instruct a community care or public law solicitor. Legal aid is available for judicial review, however, there can be delays in securing funding to proceed with a case. It can also take time to find a solicitor, who then may not have capacity to take the necessary action immediately. Furthermore, in our experience local authorities commonly focus on the credibility of applicants. These cases can take longer to prepare as comprehensive evidence needs to be gathered to address or refute the issues raised by the local authority. In addition courts are not always willing to grant interim relief even where permission to proceed to a full hearing is granted.

During this time, a family may be left unsupported, often facing serious hardship and homelessness whilst waiting for their public funding application to be approved. In some cases families may be able to access support from friends or family whilst their legal representative brings proceedings to challenge a refusal of support. Other families may be left street homeless with their children. Families may be forced to sleep on night buses or go to a police station or an A&E department of a local hospital. Project 17 views these situations as unacceptable, presenting a serious safeguarding risk, impacting significantly on child welfare, and leaving families vulnerable to exploitation.

In 2017, 29% of Project 17's cases (39 families) were referred to community care solicitors for support to challenge a negative decision. However, the majority of these cases settled in the families' favour before legal action commenced.

### Case Study:\*

Samira has three children aged 12, 6 and 5. She and her children had previously had British citizenship but this was revoked by the Home Office, leaving her with no leave to remain. Samira lost her job and fell into rent arrears, and the family were then evicted from their housing association property. Homeless and without an income to meet their essential needs, the family spent several months moving around, staying with different friends and neighbours.

\*names and identifying features have been changed for all case studies in this report

Samira approached the Nil Recourse team at the Royal Borough of Greenwich for support with accommodation and subsistence. Following an assessment the family were refused support because Samira did not have an outstanding immigration application. Two of Samira's children were entitled to British citizenship and Samira had grounds to make an application for leave to remain based on private and family life, however as the family were destitute, Samira could not afford to pay for immigration advice.

Samira and her children were left street homeless on two separate occasions whilst trying to request help from the Nil Recourse team. On the first occasion, the family were forced to stay in an A & E department overnight, where the safeguarding officer succeeded in getting Greenwich's Children's Services department to agree to accommodate the family the next day. On the second occasion, the family were evicted from their s. 17 accommodation and spent the night in a police station. Samira's friend then agreed to accommodate them whilst her community care solicitor challenged the termination of support. This challenge was ultimately successful and the family were provided with accommodation and financial support by the Nil Recourse team. The family now have leave to remain with recourse to public funds.

Samira gave us her account of the experience of being left street homeless with her children:

*"In November 2016 I was evicted from where me and my children were living at a housing association place. Then we had nowhere to live so we were moving around different friends.*

*We stayed with each friend for a few weeks or a few days, then we had to move on. Often we had to beg people to let us stay, or wait outside until late before someone would let us in. The not knowing was very tiring, not knowing if they will kick you out or if you will find somewhere to stay. And not having any money either.*

*It really affected my friendships with those people. There were four of us, me and my three children, so it was really difficult for them to have us staying there, I don't blame them. We are not really friends any more. I don't have friends any more.*

*We had been staying with a friend, Lynette for a few weeks. That day I had taken the kids to school in the morning and when I got home, the locks had been changed. It was in December, it was really cold.*

*I phoned around friends to try and see if there was somewhere for us to go, but nobody could help. Then I went to the council. They said they cannot help us. They said the only thing I can do is I have to give the boys up to their dad, because I didn't have an application with the Home Office. There is no way I could allow that because their dad would not care for them properly. He was violent to me before.*

*I'd been told I could make an immigration application but I didn't have an application with the Home Office because I didn't have any money to pay a solicitor.*

*Before that we had already been referred to Greenwich NRP [no recourse to public funds] team, and they were doing the assessment. I went to see the social worker on that day, she said they cannot help us, they cannot do anything. She seemed like she didn't care. They were quite harsh with me and told me that I have to leave the building or they will call the security. Then I left and went to pick up the boys after they finished from school.*

*After school we went and waited in McDonalds, because the boys were really cold. When McDonalds was closing at about 11 or 12 we went to the hospital. It was the only place I could think of to go because it doesn't close.*

*We didn't have any money to buy food. Another lady, a customer in McDonalds was wondering why we were still there, and the boys were still in their uniform at that time. I explained and she bought us some food. When they wanted to close the restaurant, they asked us to leave.*

*Then we went to the A & E department of the hospital. We just walked in and sat in the waiting room. I didn't tell anyone why we were there at first. The boys were very tired but they couldn't lie down, they could only sit on the chairs.*

*Later on someone came – one of the nurses, she said she could see we had been waiting there a long time and was asking why we were there and the boys in their uniform. This was about 4am. She went to call the night manager. She was kind to us. The night manager came and talked about the situation. She said she would call social services.*

*My older son then got very sick, he started vomiting. I think because it was very cold and we had been outside. They just had their school uniforms and coats on. They gave my son a bed at that point, we were*

*put in a cubicle. They didn't give us food but the night manager gave me £20 from her own money, I went to buy some food for the children.*

*I didn't get any sleep. The children didn't get any sleep. They were just asking me what was happening, what are we going to do, where are we going to go? The little one was crying. We didn't get any sleep at all until the next day when finally the social services gave us some emergency accommodation at about 6pm.*

*They only gave us somewhere to go because the safeguarding officer at the hospital contacted Lewisham and Greenwich social services. Lewisham were saying it is not their responsibility. Greenwich were also saying that it wasn't their responsibility. Neither of them wanted to help us.*

*Eventually the children's services in Greenwich said for me to come back and see them at the Woolwich Centre in the morning at 10am. We were given temporary accommodation for a while but then social services kicked us out. When we had to leave there, a friend took us in for 2-3 weeks but then one night she didn't allow us back. We went back to the house and she didn't open the door for us. It was dark and really cold. We stayed in McDonalds until they closed about 11.30pm, and then we were just in the street until we were seen by the night pastor later on, in Woolwich. We were just standing there in the street, holding each other. I didn't know what else to do. We were stood there for one or two hours. The street was quiet except for there were other homeless people and drunk people. It was really scary. I felt like we were in danger, there were drunk people. The kids were really scared and I was too. I didn't know what could happen. Anything could happen. We were all very tired, exhausted. The two younger ones were crying, saying their heads hurt.*

*When the night pastors came they called the police. They came and took us to the police station. When we got to the station they handed us over to the receptionist. She called the social services, but they said no, they are not going to help us. We stayed in the police station overnight. They gave us an office to go in and some blankets to put on the floor so the boys could lie down. They didn't sleep though, it was uncomfortable and hard on the floor.*

*We did have something to eat about 5pm, but the boys didn't feel like eating because they were really worried. At least it was warm in the police station. The receptionist said she doesn't understand why they are doing this, she doesn't understand anything about the social services or know what they are doing. That was the scariest night for me. It affected me in so many ways. And my children, they will never forget that in their lives. I know they are cutting a lot of services but that shouldn't mean that they do things like this. When they see a desperate situation, they can't wait for someone to die before they change the rules. We could have died. They could have lost 4 lives, just because of not helping on that one night. In the end we were OK, but somebody else's situation could be worse. When kids are involved, it's really, really hard, they can't just leave them like that.*

*I used to think how can people kill them themselves, but at that time, that is what I was thinking. We were rejected over and over. We had no options. I felt like what's the point in living. My children were trying to comfort me, they told me not to worry, everything will be OK. I want a good life for them. I want them to live full lives.*

*I just thank God it is over. It was a nightmare. "*

## **7. Impact on children of being street homeless**

Leaving children street homeless presents clear safeguarding risks. Without access to food, shelter and warmth, children are unable to have their most basic needs met. Their physical safety is in immediate threat – they are vulnerable to ill health and at risk of potential harm from others. Project 17 has encountered situations where parents have accepted offers of accommodation from strangers in order to avoid street homelessness, putting mothers and children at risk of abuse or exploitation.

Project 17 has also found that children are traumatised by the assessment process and by their experiences of being homeless.

As part of our research for this report, we spoke in detail with two families who were left homeless following a refusal of support.

Our research found that:

- Both families had to seek refuge in a Police station and/or a hospital with their children to avoid freezing cold temperatures and threats to their physical safety
- In both cases the physical health of the children was negatively affected due to lack of sleep, food and lack of access to warmth and shelter
- In both cases the children were aware that they were homeless and had nowhere to sleep, causing them to be distressed, tearful and frightened
- The children were aware that their parents had no money to buy food and remembered feeling hungry
- The experience of being homeless left the children feeling unsafe
- All of the children remembered other members of their family being distressed or upset at the time they were homeless
- Several of the children stated that they were fearful that they would have to sleep outside
- All of the children had strong memories of the experience over a year later

Samira described to us how her children were affected on the nights the family were street homeless :

*"The whole time I was just thinking about where am I going to go with these three children. I don't want them to be taken into care. I had no money and no help. I felt very sad. I was crying a lot. The boy was upset to see me cry. I tried not to but I couldn't help it.*

*We all do think about it still now. We talk about it. It's affected us a lot. We say we should be grateful because we didn't have anything before. Now I have a job and we are OK, so we are really grateful for that.*

*The little ones don't really understand it properly. But I think the older one does, he asked why we are homeless, and I don't have any money? He asked why can't they give us anywhere to live? "*

The children from the two families (aged between 6 and 12) completed questionnaires about their experiences. The responses confirmed that the children, especially the older children, were deeply affected by their experience of being homeless, and they retained negative memories of the experience long after the event.

Below is an extract from a questionnaire completed by a 9 year old child:

3. Did the social worker talk to you? What did they say?

No, they spoke to my mum, and said they can't help us.

6 Did you get to go to sleep at all? Where did you sleep?

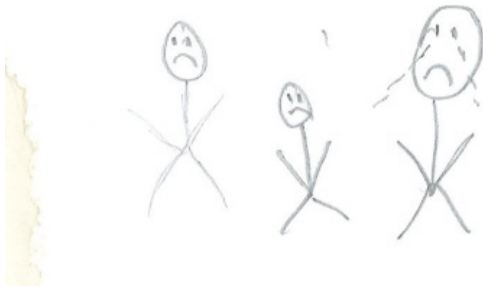
We slept at hotel and police station.



7. Did you have something to eat?

No

9. Can you draw how other people in your family felt about what was happening?



10. What were your fears or worries?

I was scared we were going to sleep on the floor outside.

13. Is there anything else you want to say about what happened to you?

It not a good experience for children growing up, I in night we didn't know where we were going.

## 8. Costs to local authorities

We are aware of the serious financial pressure faced by most local authorities. Councils are not reimbursed for any money spent supporting families under s.17 of the Children Act, so all costs must be met by existing budgets. The NRPF Network hosts the 'NRPF Connect' database, which allows local authorities to share information and check the immigration status of people they support. Data from 2017 show that the 50 participating local authorities supported 3,094 households (including approximately 4928 dependants) at a combined weekly cost of around £970,000, or £50 million per annum.

Whilst we recognise the need to protect local government finances, our research suggests that councils are disincentivised from providing support by financial pressures. The tension created between families' needs and local authorities' resources engenders an environment in which families can be wrongly turned away and left homeless.

The risks to children inherent in this approach are discussed above. We are also aware that, taken as a whole, the costs of defending a legal claim may outweigh any short-term savings accrued from refusing to support families. We note that there are also additional public costs incurred through a person accessing legal aid while a decision is challenged.

One of Project 17's trustees, community care solicitor Clare Jennings of Matthew Gold & Co. Ltd. Solicitors explains what level of costs are involved:

*"A local authority's costs in defending a claim are likely to be significant. Firstly there will be their own costs: the time spent by children's services/NRPF teams in providing instructions and witness evidence; the time of in-house solicitors in defending the claim; and disbursement costs, in particular, the cost of counsel. As most claimants in these challenges will be in receipt of legal aid, these costs are not usually recoverable whatever the outcome of the case. Secondly, in judicial review, the presumption is that the losing party will pay the successful party costs and so where a local authority unsuccessfully defends a claim they could end up liable for the claimant's costs. Therefore the costs in defending these claims could be very significant, and a single case could end up costing a local authority tens of thousands of pounds".*

## 9. Summary of funds used for emergency accommodation

Between March 2017 and March 2018, Project 17 spent £3,244 on hotels for 17 families who were refused support with accommodation under s.17 of the Children Act. These families consisted of 18 adults and 30 children.

Figure. 1 shows the breakdown of the use of the hotel fund by local authority.

In most of the cases where the Hotel Fund was used, the families were referred to a community care solicitor to challenge the refusal of support. In a small number of cases we were able to provide advocacy which led the local authority to change its decision and provide support, without the need for a solicitor to become involved.

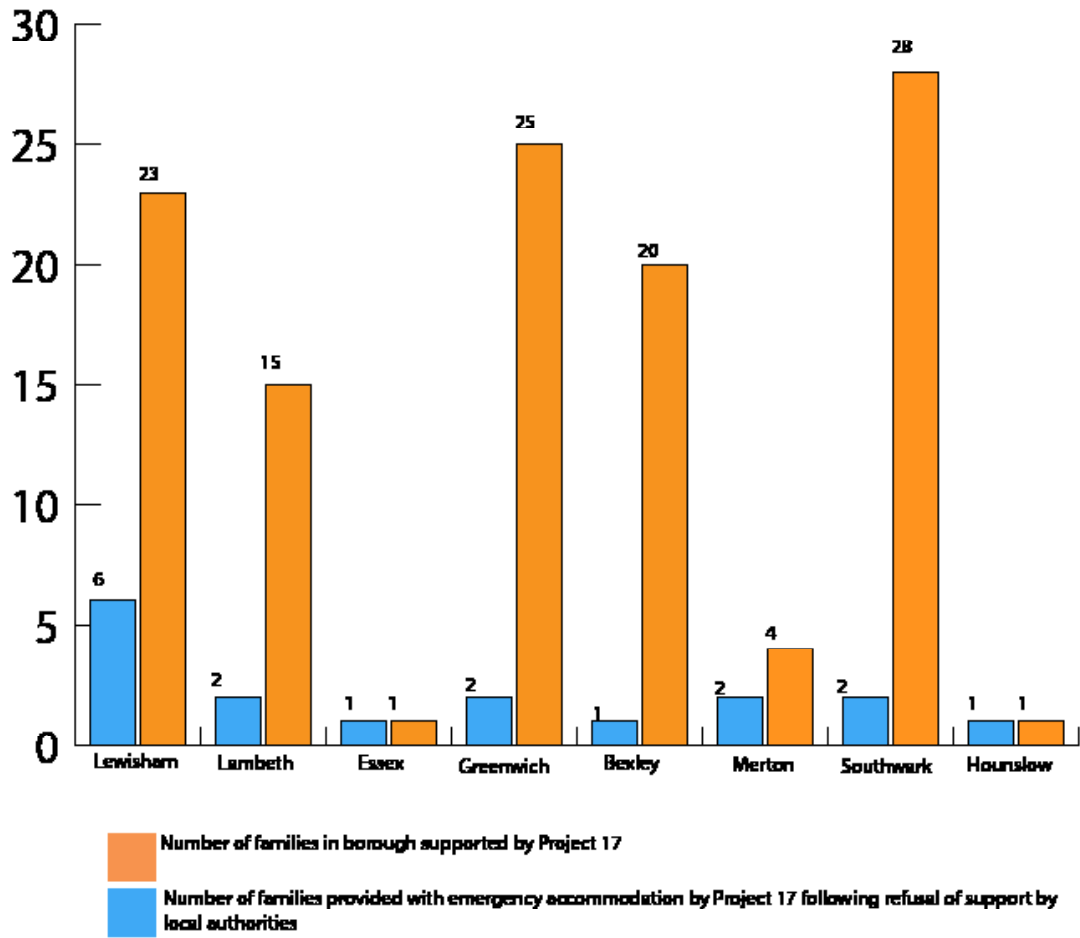
Figure. 2 shows the outcomes of the cases where the Hotel Fund was used.

In 14 of the 17 cases where the hotel fund was used, local authorities reversed their decision to refuse support and the families were accommodated.

In three cases local authorities maintained their decision not to support the family and this was not successfully challenged. The facts and issues in these cases were complex, but the s.17 assessments focused on using the credibility of the parent or their immigration status, to refuse support. We have found that the courts will often defer to the discretion of the assessing social worker and be reluctant to undertake an analysis of the facts in a case, therefore we have found that the judicial review process is not always an effective tool to challenge decisions.

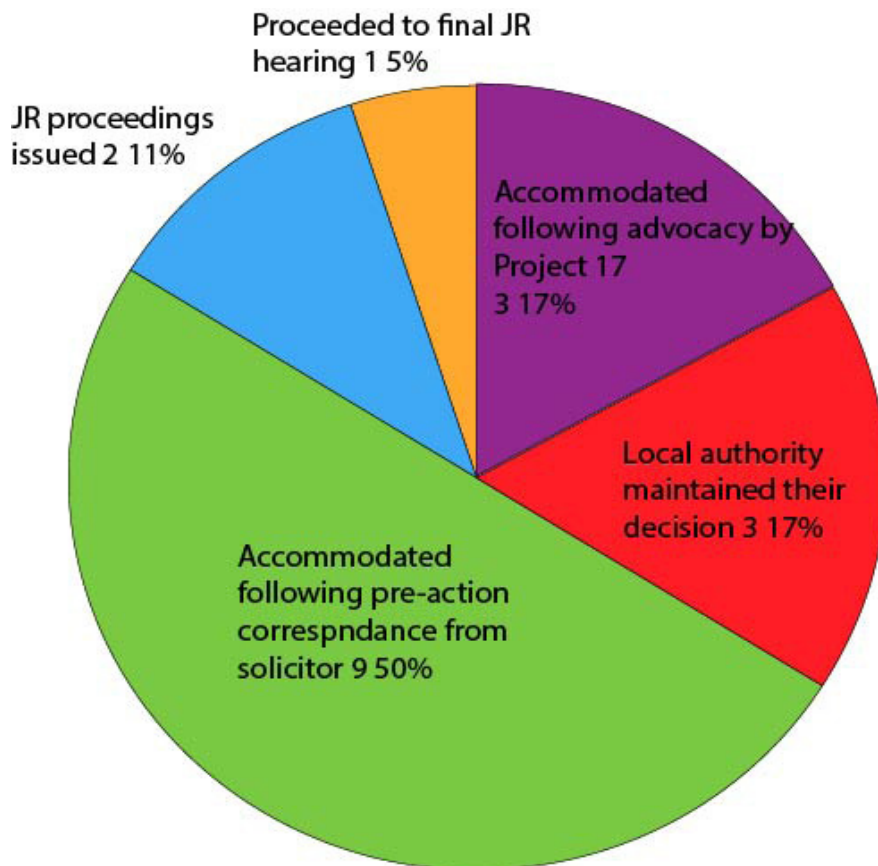
Below (page 12) is an example of one of the cases in which the negative decision of the local authority was not successfully challenged:

### Outcome of cases where Hotel Fund used



[Fig. 1]

### Outcome of cases where Hotel Fund used



[Fig. 2]

## Case Study

Abiola is from Nigeria. She is the sole carer of two children aged 3 and 2. Her older child had been diagnosed with severe autism and her second child was also suspected to be affected by autism. Abiola approached Lewisham No Recourse to Public Funds (NRPF) team when she became homeless after being abandoned by her ex-partner, who had previously supported her and her children. Abiola had no right to work due to her immigration status. After her partner left, she and her children were left homeless and without money to meet essential living needs. Abiola found shelter in a disused property above a local shop. The property had no running water or heating, and was completely unsuitable for children to live in.

Lewisham NRPF team refused to accommodate Abiola and her children together because she had no outstanding immigration application. They offered to accommodate her children only, but Abiola could not agree to this as she knew that it was in her children's best interests to be cared for by her, particularly due to their high needs. Abiola approached Project 17 for assistance. We were extremely concerned about the welfare of the children and paid for hotel accommodation for the family whilst we referred the family to a community care solicitor to challenge Lewisham's decision. Lewisham NRPF team then agreed to provide interim support pending the outcome of the assessment.

Unfortunately, Abiola disengaged with the assessment process due to acute stress. We made a safeguarding referral to Lewisham NRPF team because we were concerned that the family had become homeless again. No action was taken despite repeated attempts by Project 17 to follow this up.

Abiola and her children moved to another area to stay with a friend, but this arrangement broke down due to the high needs of her autistic son. Abiola approached the local authority in that area, but was again refused support. Project 17 referred her to another community care solicitor and also contacted her MP, after which a short period of interim support was agreed by the local authority but then terminated again.

Abiola then disclosed a potentially serious safeguarding threat to her older child, who appeared to be at risk of trafficking. We contacted the police to request that a referral into the National Referral Mechanism be made. Worryingly, the police refused to take any action.

A safeguarding referral was also made to a third local authority for a s. 17 assessment, when we believed the family to be living in that area. Again, no action was taken. We were extremely concerned that none of the multiple agencies contacted took the safeguarding needs of this vulnerable family seriously, and instead focused on the immigration status of the parent.

Project 17 assisted Abiola to access quality immigration advice and she has since claimed asylum. The family are now supported by the Home Office. Significantly, to obtain this support, Abiola had to prove to the Home Office that she was destitute (which was not accepted by any of the local authorities contacted through the course of our involvement with the family). Abiola and her children are thriving now that they have access to safe accommodation and are able to meet essential living needs.

## 10. Lobbying and advocacy undertaken with local authorities

Project 17 tried to engage with Southwark, Greenwich, Lewisham, Bexley and Lambeth local authorities following our intervention in these cases.

In the first instance, we wrote to the five local authorities separately. We raised concerns that families would have been left street homeless but for our intervention; and explained that following advocacy or legal action, the initial decisions were generally reversed. We also expressed concern about the immediate and longer term impact on children and requested an explanation about what had gone wrong.

We also made Freedom of Information Act (FOIA) requests to the above five local authorities, requesting data on numbers of families assessed, numbers of families supported, and the legal costs incurred to the council in defending claims against it.

Details of their responses and our further work in these boroughs are given below.

# London Borough of Southwark

Between March 2017- March 2018, Project 17 advised 28 families resident in the Southwark area. We used the hotel fund to provide emergency accommodation to two families who were left street homeless as a result of a refusal by Southwark NRPF team to provide accommodation:

## Problems accessing support

The families we supported in Southwark encountered the following problems in accessing support:

- **'No walk-ins' and Delays providing initial appointments:** Southwark NRPF Team does not accept 'walk-in' applicants. Families must contact the team by phone or email for an appointment, and we have found they often experience significant delays in being given an appointment. This can cause serious problems for families with urgent needs.
- **Poor initial decision making:** families are often initially refused support because they were found to be 'not destitute' by the local authority. We found that these decisions are often flawed. Some families were assessed as 'not destitute' despite the fact that they were homeless, their accommodation was completely inadequate or unsafe, or they clearly had insufficient income to meet their essential needs. On occasions the NRPF team assessed our clients' destitution using potential, rather than actual income. They stated that because the parents had the right to work, they should be able to provide for the child, even though they were not currently in work or could not work due to childcare responsibilities.
- **Refusing support based on immigration status:** A number of Project 17's clients were told that no support was available because they did not have an outstanding immigration application. All of these decisions were later reversed when challenged.
- **Advising families that children will be taken into care:** Some of our clients were told that their children would be placed in foster care if the parents were unable to support them. Unless the children were at risk of serious harm and it was not in their best interests to remain with their parents, the local authority should be considering supporting the family as a whole, rather than offering to support the children alone.

## Response to our FOIA request

Southwark provided the following data in response to our request for information covering the time period 1st November 2017- 30th November 2017:

1. *How many families requested support with accommodation and/or subsistence?* **33**
2. *How many families were provided with accommodation and/or subsistence at first instance following such a request?* **6**
3. *How many families were initially refused support?* **0**
4. *Of the families who were initially refused support:*
  - a) *in how many cases was this decision overturned and support later provided? Please include cases where interim support (on a 'without prejudice' basis) was provided, as well as a final decision to provide support.*
  - b) *In how many cases did the family's legal representative threaten Judicial Review of the decision to refuse support, leading to a review of the original decision?*
  - c) *In how many cases were Judicial Review proceedings issued?*
  - d) *In how many cases did the case proceed to a full hearing?*

***Please see response to question 3***

5. *Please provide details of any legal costs to your department arising from such cases.*

***Please see response to question 3***

Based on the experiences of our clients and data from our advice service, it is difficult to see how there were no refusals of support during this period. Project 17 are aware of at least 1 of our own cases where interim support was refused when the client became homeless before the full assessment could be completed.

We are concerned that this response is potentially misleading, or information is not accurately recorded. One explanation for there being 33 requests for support and no refusals, is that in these cases the assessment remained ongoing during the time period. Alternatively it is possible that the phrasing of our request, regarding 'initial refusals of support' has led to ambiguity. We will contact Southwark to try to clarify the response.

## Response to our letter

We wrote to the Director of Children's Services, the Mayor of Southwark, the Cabinet Member for Children and Young People, and the Manager of the NRPF team. We were advised by the Director of Children's Services, David Quirke-Thornton, that the manager of the NRPF team would respond to our letter. After some delay, we have now received a response from Alex Irvine, Community Support Manager (Communities Division) at the Housing and Modernisation Department, who has overall responsibility for Southwark NRPF team.

Mr Irvine states that ***"Often people are able to remain where they have been staying or they can stay with other friends and family on a short term basis before our assessment commences... We operate an appointment system to avoid families having to wait for long periods in our offices and to ensure that we can manage our staff resources appropriately."*** This does not address the concerns we raised about the families where Project 17 paid for emergency accommodation, because they could not remain where they were or stay with friends.

Mr Irvine further states that ***"the Council and our partners on the Southwark Safeguarding Children Board treat reports received of children sleeping on buses, hospitals or at the police station extremely seriously. In cases where claims of sleeping at police stations etc are made we alert the relevant agency and investigate the circumstances....The Council receives around 500 referrals a year from, or on behalf of, households with no recourse to public funds, with around one in three households is accepted for support. Whilst we do receive representations from legal representatives the vast majority of cases are considered without the involvement of legal representatives."***

As explained above, Project 17 have encountered poor quality decision-making from Southwark's NRPF team. We are concerned that not all families who are refused support by the department have the opportunity to access advocacy support or legal advice to ascertain whether a refusal is lawful.

Unfortunately Mr Irvine's response does not adequately address our concerns, and we plan to meet with Mr Irvine to further discuss the issues raised.

## Our work within the London Borough of Southwark

Project 17 has had regular meetings with Alex Irvine. This has been an opportunity to raise specific concerns and request a change in practice. We have also met with Southwark's Cabinet Member for NRPF, Fiona Colley to raise our concerns.

We have also worked with a local network of health, education and voluntary sector professionals working with NRPF families, Southwark Action for NRPF.

## Outcomes

We have seen the following positive outcomes and improvements following the course of our engagement during the above period:

- Improved communications with the NRPF team and better responsiveness
- Fewer reports of clients being threatened with children being taken into care.

- An improvement in timeliness of assessment appointments offered. Normally an appointment will be offered within one week, whereas previously this was around one month.
- An increase in families facing destitution because they were living in inadequate accommodation, being offered alternative accommodation

## Further work

We remain concerned about the London Borough of Southwark's continued operation of a 'no walk-ins' policy and the negative impact this has on families with urgent need who experience difficulties requesting interim support.

We are also concerned that the quality of decision making remains variable, especially in terms of assessing destitution.

We are considering further policy work which is likely to take the form of a formal group complaint on behalf of our service users, which we hope will force the NRPF team to take the issues affecting our clients more seriously.

We are also undertaking capacity building work with other professionals in the area by providing 'intensive support' (training and ongoing casework support) to Southwark Action for NRPF, to enable them to more effectively counter poor practice and negative treatment of NRPF families in Southwark.

## Royal Borough of Greenwich

Between March 2017- March 2018, Project 17 advised 25 families resident in the Greenwich area. We used the hotel fund to provide emergency accommodation to two families who were left street homeless as a result of a refusal to provide support by Greenwich NRPF team:

### Case Studies

Diana and her four-year-old son had been living in private rented, shared accommodation. The family was evicted due to rent arrears. We referred them to Greenwich Nil Recourse team for support but this was refused, claiming that Diana could rely on family and friends. Diana was told she needed to show the council a number of documents which she could not provide immediately. The family were left without anywhere to stay that night. Project 17 paid for one night's emergency accommodation whilst continuing to advocate for her. Following this, Greenwich's Nil Recourse team agreed to accommodate the family.

In the second case, we made an urgent referral for an assessment as our client Zainab and her three-year-old child (a British citizen), were being evicted by a friend. The Greenwich Nil Recourse team started the assessment the day before the eviction, but informed the client that the assessment process would take 28 days and interim support would not be provided. Zainab had nowhere else to stay for the next 28 days, so she and her child were facing street homelessness. Project 17 paid for one night's emergency accommodation for the family and continued to advocate with Greenwich and their in-house legal team. Following this Greenwich agreed to provide interim support, and the family remain supported to date.

### Problems accessing support:

- The main issues Project 17 have encountered with Greenwich NRPF team have been:
- Refusals to conduct a Child in Need (CIN) assessment
- Refusals to provide interim support during CIN assessments
- Failure to safeguard children from destitution
- Threats to take children into care
- Mistreatment or aggressive behaviour by Nil Recourse team staff
- Heavy involvement in the Child in Need assessment from an 'embedded' Home Office worker, raising concerns about data sharing and putting families in fear of adverse immigration consequences

## Response to our FOIA request:

Greenwich initially provided the following limited information regarding numbers of families supported by the Nil Recourse team:

- *During 1<sup>st</sup> March 2016- 1<sup>st</sup> January 2017, 245 Families approached the NRPF team for support.*
- *52 Families were supported following assessment (21%)*
- *193 families were deemed to be ineligible (78%)*
- *During 1<sup>st</sup> March 2017- 1<sup>st</sup> January 2018, 264 Families approached the NRPF team for support.*
- *66 families were supported following assessment (25%)*
- *198 families were deemed to be ineligible (75%)*

However, in response to our request for information regarding legal costs to the department, this was refused citing that the request would exceed the cost limit set under section 12 of the Freedom of Information Act, therefore they did not have an obligation to comply with the request.

We revised our request to cover a more limited period in order to obtain further information regarding legal costs. The response confirmed that within the Royal Borough of Greenwich during the shorter period 1st – November- 30th November 2017:

- *24 families requested support with accommodation and/or subsistence*
- *6 families were provided with accommodation and/or subsistence (25%)*
- *18 families were refused support (75%)*
- *In one of the cases where the family was initially refused support, the decision was later overturned and support was provided (0.4%)*
- *In no cases did a family's legal representative threaten judicial review of the decision to refuse support, leading to a review of the original decision*

No details of legal costs were provided, presumably implying that none of the families tried to legally challenge the negative decisions

## Our work in the Royal Borough of Greenwich

Project 17's Policy Officer also met with two senior Council officers and the Councillor responsible for the NRPF team alongside representatives from Greenwich Migrant Hub and Greenwich Housing Rights. We discussed the presence of the immigration officer within the NRPF team and attempted to clarify the role of the officer. We raised several issues our clients had experienced when interviewed by the embedded immigration officer. These included intimidation, misinformation, aggression, discrimination, and children being told directly to return to their countries of origin. The Council officers promised to respond to the minutes of the meeting clarifying the role of the immigration officer but have failed to do so.

We also made a formal group complaint against the Royal Borough of Greenwich on behalf of four families with No Recourse to Public Funds who were willing to take action to hold Greenwich to account for failures in their cases.

## Further work

The local authority failed to adequately respond to our complaint, which is now being considered by the Local Government Ombudsman.

## London Borough of Lewisham



Between March 2017- March 2018, Project 17 advised 23 families resident in the area. We used the hotel fund to provide emergency accommodation to six families who were left street homeless as a result of a refusal to provide support by Lewisham NRPf team.

### **Problems accessing support:**

Project 17 has worked with a large number of Lewisham families who report poor treatment and problems accessing assessments and support. Lewisham have in the past alleged that 1 in 3 applications to the borough for support are 'fraudulent'. We dispute this figure. Our clients have faced the following issues in approaching Lewisham for support:

- Aggressive treatment towards families
- Threats to take children into care
- Attacking credibility of clients
- Failure to safeguard children
- Failure to safeguard families experiencing domestic violence
- Accusations of deception and fraud and inclusion of a 'fraud officer' in the assessment process without prior consent or access to legal advice
- In one case where the hotel fund was used, the case proceeded to a full judicial review hearing:

### **Case Study**

Mary is the sole carer for her two children, aged five and six. Mary had recently been granted limited leave to remain, but this was with a 'no public funds' restriction. In the past she had been supported by family, but since Mary had been granted leave to remain and had the right to work, they had stopped helping her.

Mary started working for an agency, with irregular hours and on low pay. Mary could not keep up with the rent on the family's home as well as meeting her children's needs, and eventually the family were evicted due to rent arrears. A request was made to Lewisham NRPf team for an assessment, with a view to them providing accommodation for the family as they had nowhere else to go. Lewisham NRPf team refused support on the basis that Mary could seek help from her family who had assisted her in the past. Mary explained that her family were no longer willing or able to support her, but this was not accepted by Lewisham NRPf team.

After the eviction and following the refusal of s.17 support, the family were subjected to a long and traumatising period of homelessness whilst their solicitor tried to challenge the refusal through the courts. When Mary received her wages from her employment she paid for hotel accommodation, however this quickly used up her scarce funds. Project 17 paid for 5 nights' emergency accommodation, the maximum allowed under our policy. When Mary's options had completely run out she and the children were forced to sleep in an A & E department for several nights until a friend who worked in the hospital took them in temporarily.

Despite Lewisham NRPf team being made aware that the family were sleeping in the hospital, they still refused to accommodate the family. Project 17 arranged a hosting placement with a migrant charity for the family whilst their solicitor challenged the Council's approach. After a number of interim relief hearings the family finally won their case and an order was made against Lewisham. The family were later granted access to public funds by the Home Office, because it accepted that they were destitute.

Project 17 worked intensively to support Mary whilst her solicitor brought proceedings against Lewisham on her children's behalf. Mary's community care solicitor, William Flack of Morrison Spowart Solicitors, explains that:

*“In Mary’s case the family ended up having nowhere to go on a number of occasions in addition to having to spend all of her wages on hotel accommodation. The hotel accommodation and later the placement which Project 17 were able to arrange was extremely important in preventing street homelessness during the lengthy proceedings when the Court had refused to order Lewisham to provide interim accommodation.”*

The Administrative Court in Mary’s case, *R (on the application of CO and KO) v LB Lewisham* [2017] EWHC (Admin) 1676, found that Lewisham had acted irrationally in concluding that Mary had the means to provide her children with accommodation such that the children were not in need. The decision confirmed that a local authority’s duty under s. 17 Children Act 1989 is a continuing one. Lewisham had conducted a follow-up assessment but had relied heavily on its earlier assessment to conclude that Mary had access to support from her network, and did not accept (or investigate) her reports that the family were left street homeless. At the final hearing Judge Walden-Smith concluded that:

*“On the evidence I have before me, I am satisfied that the accommodation the claimants have had access to .... is woefully inadequate and insecure.... Lewisham failed to carry out those necessary inquiries.*

*....On the face of it, all the evidence, including that from MASH, shows that this is a mother who cares for her children. The description from the school is very positive and there are no safeguarding issues. At the same time, there is cogent evidence that [Mary] is sleeping with her children in the accident and emergency department of the local hospital in order to avoid street homelessness at times when she does not have the money to pay for accommodation.*

*...In my judgment, on the basis of all the evidence that I have seen and after a very careful consideration of these matters, the decision of Lewisham is irrational. Lewisham have, in my judgment, fallen into a trap of considering that this is a battle between themselves and the claimants’ mother and that she has an agenda which means that she is cynically putting her children, who she otherwise cares for, at risk. To reach that conclusion, and I have not come to this decision lightly, is in my judgment irrational.”*

The concerns expressed by the judge in this case are consistent with Project 17’s experiences of supporting families to request help from Lewisham. The assessment process attacks the credibility of the parents to the extent that serious and obvious safeguarding issues (such as children sleeping in an A & E department) are not addressed.

In addition, the costs awarded in this case (against Lewisham) were significant- the Council were ordered to pay 70% of the costs, which were agreed at £29,000. This figure dwarfs the amount that would have been spent on accommodation for the family. There was also a clear and significant personal cost to the family who endured a lengthy period of instability and poor treatment by the local authority.

## **Response to our FOIA request**

At the time of writing this report we had not yet received a response to the freedom of information act request we submitted to London Borough of Lewisham. The statutory timeframe for a response is 20 working days, which has been far exceeded. We raised this with Lewisham, who apologised for the delay and assured us that our request had been prioritised for a response.

## **Response to our letter**

We received a response from Lee Georgiou, Housing Needs and Refugees Manager, stating that *“The Council neither accepts Project 17’s presentation of the cases or the statement that any family has been left street homeless as a result of an assessment undertaken by the authority and a decision to refuse support.”*

Even in the case of Mary and her children (described above), where there was a judgment in favour of the client, Mr Georgiou still does not accept that this outcome reflects that the Council was at fault. Mr Georgiou worryingly states that *“what this case actually highlights is that when an applicant is granted numerous hearings, they will obtain a judgment in their favour”*. Project 17 strongly refute this suggestion. In our experience, once an applicant has had a negative judgment in their favour, subsequent applications are likely to be viewed with caution as the applicant’s credibility has been damaged.

Nonetheless, more positively Mr Georgiou’s response does state that *“Lewisham Council has taken HHJ Karen Walden Smith’s judgment regarding procedural fairness seriously, and will ensure the judgment informs*

*future NRPf practice.”*

## **Further work**

Project 17 plan to escalate our concerns by meeting soon with local MP Vicky Foxcroft. We are considering making a formal complaint on behalf of our clients as we are not satisfied by Lewisham’s response.

We understand that Mr Georgiou has recently taken over management of the NRPf team and we hope to meet with him soon and initiate a positive dialogue to address the issues we have encountered to date.

## **London Borough of Bexley**

Between March 2017- March 2018, Project 17 advised 20 families resident in the Bexley area. We used the hotel fund to provide emergency accommodation to two families who were left street homeless as a result of a refusal to provide support by Bexley NRPf team.

### **Problems accessing support:**

To date Project 17 have had a fairly positive relationship with Bexley NRPf team, with reasonably open channels of communication. However, there are still a number of issues that clients face when trying to access support:

- Flawed or irrational decisions to refuse support
- Refusal to provide interim support (particularly financial support)
- Poor treatment of families attending for assessment
- Delays in providing assessment appointments and in completing assessments

### **Case Study**

Project 17 used the hotel fund for our clients Elizabeth, her partner Tunde and their four children aged four, six, nine and ten. Elizabeth and Tunde had both previously been granted limited leave to remain, with a no recourse to public funds restriction. They both worked but their hours were part-time and their income was low. They struggled to afford accommodation and living costs on their earnings. When the time came to renew their leave to remain, they had not been able to save the money for the substantial Home Office fee and NHS surcharge, which amounted to thousands of pounds. They had also fallen into arrears with their rent and were being evicted from their sub-let property.

We referred the family to Bexley NRPf team for an assessment. Although the eviction was imminent, there was a delay in providing an assessment appointment. Whilst they were still waiting for an assessment, the family were evicted without notice by bailiffs. The family had to present immediately as homeless to Bexley NRPf team. The family were initially provided with three nights’ interim accommodation until an assessment appointment could take place on the following Monday morning. However, following the appointment the family were informed that they would not be provided with any ongoing support and should stay with friends, even though the family had no friends who could accommodate a family of five. We were very concerned that the family were facing street homelessness that night and the assessment had seemingly given no consideration as to whether the children were ‘in need’ for the purposes of s.17.

To avoid the family being left street homeless, Project 17 paid for emergency accommodation for four nights at a cost of £379 and referred the family to a community care solicitor for further advice. After the solicitor’s intervention, Bexley’s legal department confirmed that a new assessment would be conducted and interim accommodation was provided pending the outcome.

## Response to our letter

When we wrote to Bexley's Director of Children's Services regarding Elizabeth's case, our letter was treated as a formal complaint and we received a response from Jo Songer, Housing Manager. The response stated that:

*"It is noted that Project 17 funded a placement for three days for the household. Since this time and following discussions with our legal team a decision to provide further accommodation whilst a fraud investigation is carried out was made. There was no additional cost to the department for this advice.*

*"...Whilst I do not uphold all aspects of your complaint in that our actions and decisions were flawed, I agree that even with the inconsistencies and fraud triggers, consideration should have been given to where the children would be residing during the interim period. For that reason I will be instructing the NRPF team to contact you directly with the view of refunding the £379 cost of accommodating this household."*

We were pleased that the local authority recognised the serious risk posed to the children by leaving them street homeless. We were also pleased that Bexley agreed to refund our costs, which will enable us to use these funds to assist another family who are in urgent need.

## Response to our FOIA request

Bexley provided the following information in response to our FOIA request:

*"During 1st March 2016 – 31st January 2017 Bexley received 63 requests for support with accommodation and/or Subsistence.*

*Between 1st March 2016 – 31st January 2017 – there were 19 families supported.*

*Between 1st March 2016 – 31st January 2017 – There were 26 families refused support"*

This data indicates that of the 63 families initially requesting support in this time period, only 30% went on to receive support.

*"During 1st March 2017 – 31st January 2018 Bexley received 67 requests for support with accommodation and/or Subsistence.*

*Between 1st March 2017 – 31st January 2018 – There were 21 families supported.*

*Between 1st March 2017 – 31st January 2018 – There were 17 families refused support"*

This data indicates that of the 63 families initially requesting support in this time period, only 25% went on to receive support.

It appears that there are a number of requests for support that were met with neither provision of support nor a refusal. One explanation for this might be that no assessment was initiated therefore no refusal ensued.

In relation to our request for information regarding legal costs to the department, Bexley responded that this data was not held.

## Further work

Project 17 have engaged with the NRPF team leader at Bexley with a view to strengthening our working relationship with the NRPF team and addressing the ongoing issues our clients are experiencing. We have offered training to the NRPF team covering implementation of s.17 Children Act 1989, housing law, immigration law, and the experiences of migrant families requesting support under s.17. We also hope to arrange a meeting with Bexley to discuss some of the issues faced by our clients.

## London Borough of Lambeth

Between March 2017 and March 2018, Project 17 advised 15 families resident in the Lambeth area. We

used the hotel fund to provide emergency accommodation to two families who were left street homeless as a result of a refusal to provide support by Lambeth NRPf team.

Below is a case study of one of the cases where Project 17 used the hotel fund to provide emergency accommodation after they were refused support by Lambeth NRPf team:

## Case Study

Faith has two children aged 11 and 4. The 4 year-old has sickle-cell disease. The family had been staying with a friend in Lambeth for over three months after being asked to leave by Faith's brother who had previously accommodated them. This accommodation included allowing them to sleep on his shop floor for two weeks. Faith had approached Lambeth a number of times but each time she had been refused support. We referred the family to Lambeth NRPf team again, as the family friend could no longer accommodate them. Lambeth refused to provide support, stating that they could rely on support from family and friends and that they believed Faith had access to substantial resources. Project 17 provided four nights' emergency accommodation to the family. The case was referred to a community care solicitor and following their intervention Lambeth provided accommodation pending further assessment.

## Problems accessing support

Some of the problems our clients have encountered include:

- Refusal to provide interim support whilst completing assessment
- Onerous demands for evidence which is difficult or impossible for clients to provide at short notice or at all
- Advising families to rely on their support network even where this is not possible

## Response to our FOIA request

Lambeth provided a response to our FOIA request and were the only department we contacted who agreed to provide any details of legal costs incurred. Their response stated that:

*"During the financial year April 2016 to March 2017, Lambeth's Children's Social Care received 181 contacts from NRPf families, including those who were seeking information and advice only. We carried out 121 section 17 assessments and 52 families subsequently received a service (ordinarily accommodation and subsistence support). 69 families were refused service based on the results of our assessment."*

Based on this information, 29% of families requesting support during this period were offered a service, and 57% were refused support. In only 66% of cases where a family contacted the department requesting support, was a full assessment completed.

*"During the financial year April 2017 to February 2018, Lambeth's Children Social Care received 156 contacts from NRPf families, including those who were seeking information and advice only. 49 families to date have subsequently received a service (ordinarily accommodation and subsistence support)."*

Based on this information, 31% of families requesting support during this period were offered support.

In response to our query about how many decisions were later overturned after a refusal of support, Lambeth stated that:

*"...Each year a small number of cases have been initially denied service but have later been offered services in the light of new information being presented post-assessment."*

*During the last two financial years, Lambeth's NRPf service received 15 Judicial Review notices, and six of those resulted in courts making an interim order for section 17 support to be provided while our assessments were being completed. In one case full judicial review proceedings ensued.*

*Legal costs to the department were as follows:*

- £50,308 for 1 March 2016 – 31 January 2017
- £24,498 for 1 March 2017 – 31 January 2018”

## **Response to our letter**

We wrote to Dr Simon Sandberg, Project Manager of the NRPF Service, Syrian Resettlement, Private Fostering, Housing and Wellbeing, to raise our concerns about the cases where we had been forced to pay for emergency accommodation due to a refusal of support by Lambeth NRPF team. Dr Sandberg’s response stated:

*“It is true that following an intervention from [Faith’s] solicitor we did provide emergency interim relief. We provided emergency interim relief precisely in order to avoid legal costs which as you will know we cannot claim back even when our assessments are upheld by the court....This is a difficult area. If we agree to provide emergency interim relief as here, we allow you to claim that you “successfully challenged refusal of support”. If we decline to provide emergency relief we are open to an accusation that we might then spend more on legal fees defending our interim view than we would have done had we simply provided emergency interim relief in the first instance. In general terms we seek only to provide emergency interim relief to those where we think there are immediate child welfare concerns that might arise in the absence of such support.”*

Although Dr Sandberg makes reassurances that interim support will be provided in cases where there are immediate child welfare concerns, in Project 17’s experience there are many families we have supported where interim support has been refused where there have been clear child welfare concerns such as threat of street homelessness. We are also concerned that there are likely to be many more cases where families are refused support and do not have access to advocacy from an organisation or representation from a solicitor.

## **Further work**

We are keen to gain further clarification and open up a more in-depth dialogue with Lambeth’s NRPF team and following further correspondence with Dr Sandberg he has agreed to meet with us to discuss our concerns.

# Conclusion

Project 17 continues to assist hundreds of families each year who struggle to access local authority support. Having access to funds to pay for emergency accommodation for families left street homeless as a result has been invaluable, providing vital shelter and safety to families who are seeking to challenge the refusal of support. This has undoubtedly prevented the 30 children who have benefitted from the fund from undergoing the traumatic experience of street homelessness, as well as protecting them from potential harm.

Nevertheless, it is unacceptable that Project 17, and other similar organisations, have been forced to fund temporary accommodation to prevent families from being street homeless. Under s.17 Children Act 1989, local authorities must safeguard and promote the welfare of children 'in need', in their area. This clearly includes supporting those families facing street homelessness, such as the families mentioned in this report. It is deeply concerning that voluntary sector organisations such as ours have no choice but to plug the gap created by the failure of local authorities to adhere to their statutory duties.

Currently Project 17 has very limited funds remaining to provide emergency accommodation in the event of a local authority refusing support to a family. We anticipate that these will be exhausted within the next few months. However, we remain committed to continuing to fight for change on behalf of our clients and to ensure fairer access to support for families with no recourse to public funds.