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## Section 17 Subsistence Payments

Where a local authority determines that a child is in need, they have the power to provide support to families with 'children in need', even if they have no recourse to public funds.<sup>1</sup> 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> A local authority's decision as to whether and how to exercise their s17 powers must be taken in accordance with public law principles and human rights obligations, but support usually includes the provision of accommodation, subsistence payments, or both.

### Calculating rates of support

Rates of support are decided by conducting a child in need assessment. A local authority must use its discretion when deciding on the rate of subsistence it will provide and cannot exercise a blanket policy in this regard. The local authority should not set maximum subsistence rates as they may need to give additional support to families who need it.<sup>3</sup> However, we know that in practice many local authorities wrongly implement fixed levels of support.

The high court determined that any amount which falls below section 4 asylum support rates (£40.85 per person per week<sup>4</sup>) was very unlikely to meet a child's essential needs.<sup>5</sup> Any amount of subsistence support which falls below this is therefore likely to be challengeable.

When determining whether to provide subsistence, and at what level, a local authority should:

- Ensure that they consider the particular circumstances of your family's case, have correctly identified what your child's needs are, and what support needs to be given to meet those

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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> *R (on the application of PO, KO and RO) v Newham LBC* [2014] EWHC 2561 (Admin)

<sup>4</sup> <https://www.gov.uk/asylum-support/what-youll-get>

<sup>5</sup> *R (VC) v Newcastle CC* [2011] EWHC 2673 (Admin)

needs. For example, if your child is disabled, your family may require additional subsistence payments to cover special equipment or extra travel for health check-ups.

- Ensure that the support given is consistent with the duty to safeguard and promote your child's wellbeing. If the amount of subsistence given is so low that your family cannot afford a sufficient and healthy diet, this is unlikely to be consistent with promoting and safeguarding your child's wellbeing. A local authority must have regard to what is in your child's best interests and this should be treated as a primary consideration when deciding what support to give. That does not mean that your child's best interest is the only consideration, but this must at least feature in the decision making.
- The local authority must provide subsistence for the entire family, not just for the child. If the rates of subsistence are based only on your child, then you may be able to challenge this.
- As alluded to above, when a local authority has guideline subsistence rates, these guideline rates should not be applied in a way which prevents them from exercising their discretion. There must also be a reasoned basis for the amount of subsistence that the local authority decides to provide, including a reasoned basis for any guideline rates.
- The local authority must also ensure that it acts in accordance with its human rights obligations. For example, refusing to provide interim subsistence or providing it at a level which is manifestly insufficient whilst they assess, may result in your family suffering inhuman and degrading treatment.

### **What will families need to provide?**

You will typically be asked to provide extremely detailed accounts of your financial circumstances. This can include, but is not limited to, the following types of supporting documents:

- 6 months' bank statements for **all** accounts, including current accounts, savings accounts, credit cards, and accounts in your partner/children's names, both in the UK and abroad
- 6 months' payslips
- P45/P60
- Child Benefit letter
- Child Maintenance letter
- Letters confirming support from friends and family. These should be very detailed, including information about how much money is/has been given, and how often, as

well as why this can no longer continue (if applicable). If the support is limited/irregular/temporary then the letters should say so

- Letters from professionals confirming financial situation (charities, GP, health visitor, school, church, mosque)
- Income/expenditure breakdown
- Recent bills
- Letters confirming debts

### **How to request subsistence support.**

If you require financial support from the local authority you will need to document your income and expenditure. It is important to:

- Keep receipts for everything bought and make a note of any purchases (i.e. what you bought, when and how much it cost). This is particularly important if you mostly buy things using cash and cannot evidence purchases using bank statements.
- Keep a note of any money or goods that you receive during this same period.
- Keep a diary of what meals each member of the household are eating each day (NB. You may need to indicate portion size as you may eat three meals a day but the portions are too small).
- Write a list of everything you need to buy but cannot afford. Include the costs for each item. Focus on items you would consider essential for your family and your child's well-being. This can include one-off and ongoing purchases.

The above steps also apply if you are already receiving subsistence payments which you believe to be insufficient.

### **Resources**

We have a range of relevant resources on our website, including a [template letter](#) for challenging the rate of support, and a [number of template forms](#) for demonstrating financial circumstances.