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# Section 17 Case Law

**What is case law?**

Laws in the UK consist of primary and secondary legislation, enacted by the legislative (Parliament) and executive (Prime Minister/Cabinet) branches respectively. However, where there is a question which is not specifically covered by legislation, or where there is disagreement as to the interpretation of that legislation, a particular case can set a legal precedent, and become the standard against which other cases are then decided. Case law introduces a new legal principle, or settles a contentious legal question; at least, until such time as it might be overturned or superseded by a new judgement. Since cases can be overturned by higher courts, or their decisions made obsolete by more recent cases, it is important to ensure that your sources are up to date if you choose to cite case law when presenting a case to a local authority. This list was last updated in November 2022, so please be mindful of this when utilising the specific cases below.

This factsheet will be mostly focused on providing a list of useful cases. For those who are keen to learn more about the more technical aspects of reading case law, there is a useful guide on the SOAS library website:
https://www.soas.ac.uk/library/subjects/law/research/file70250.pdf

**How to use it effectively**

Case law can be a good tool for reminding another party of clear legal precedent, which may help when arguing for a specific outcome in line with that precedent. When used well, it should be just one part of a larger, well-constructed case, using other resources such as a local authority's own policy documents,[1] the *Working Together To Safeguard Children* guidance,[2] and, of course, clearly laid out factual information about your client's circumstances and the relevant sections of The Children Act 1989. When citing case law to support your argument, it is important to make clear *how* it does so; it is no good to simply cite it with no explanation and hope that it will sound authoritative. For this reason, it is important to ensure that you are using a case which is directly relevant to the particular point which you are arguing.

[1] Project 17 have a dedicated resource for this purpose in the form of the Section 17 Hub. The Hub holds contact information and policy documents for a number of local authorities across England. To sign up for access, please visit: https://s17hub.project17.org.uk/home/
[2] https://www.gov.uk/government/publications/working-together-to-safeguard-children--2

***Example***

You are supporting a family who do not currently have any sort of leave to remain in the UK, but they *do* have an outstanding application with the Home Office. The local authority is refusing to support the family, and are saying that they should return to their country of origin. You could use the case of *Clue* (see below, under "Schedule 3 NIAA 2002"), and write something along these lines:

> As you are aware, *R (Clue) v Birmingham City Council* [2011] 1 WLR 99 confirmed that where an applicant has an outstanding immigration matter that is not hopeless or abusive, support under section 17 should not be withheld where doing so would have the effect of requiring the person to leave the UK and forfeit the immigration claim. The family are waiting for their immigration application to be decided. As such, the local authority is not in a position to discharge its duty by advising the family to return to their country of origin.

# Relevant Cases

<u>Child is said to not be "within the area"</u>
***R (on the application of N) v Newham*** **LBC [2013] EWHC 2457 (Admin)** – physical presence is enough to grant that a child is 'within the area' of a local authority.

***R v Wandsworth LBC ex p Sandra Stewart*** **[2001] EWHC 709 (Admin)** – this case laid out that mere physical presence was enough to grant that a child is 'within the area' of a local authority. Additionally, if a child is within the area of more than one local authority, they both/all have a potential duty to assess. Ideally, in this situation, the local authorities in question should liaise with each other to agree which of them will conduct the Child in Need assessment.

***R (on the application of BC) v Birmingham City Council*** **[2016] EWHC 3156 (Admin)** – determined that physical presence is both necessary and sufficient to constitute 'within the area'.

<u>Family is said to be excluded by Schedule 3 NIAA 2002</u>
***R (on the application of Clue) v Birmingham City Council*** **[2010] EWCA Civ 460** – set out that, if a family are excluded from social services support by Schedule 3 of the Nationality, Immigration and Asylum Act 2002, but are awaiting the result of a pending immigration application which is not obviously hopeless or abusive,[3] then social services must not automatically preclude the family from an assessment. In other words, a local authority cannot predict immigration decisions and use this as a basis to refuse to assess.

[3] A hopeless or abusive application would be one in which it is patently obvious that, for example, the sole purpose of the application is to buy time, and there is no case for it to succeed. An extreme example might be an application for leave to remain as a spouse, where the applicant is not in a relationship.

***R (on the application of KA (Nigeria)) v Essex CC* [2013] EWHC 43 (Admin)** – again, a local authority cannot predict immigration decisions, as immigration decisions are not within its statutory powers to make. This particular case refers to a local authority's decision to *withdraw* existing support from a family who had been refused leave and were planning to appeal.

Subsistence Issues

***R (on the application of PO, KO and RO) v Newham LBC* [2014] EWHC 2561** – following a lawful assessment, a local authority should provide subsistence rates that are likely to meet the subsistence needs of a destitute family (i.e. should properly consider the family's *actual* costs and circumstances, rather than applying a blanket policy). The court also said: "if the Council are seeking to keep the family together when that is in the children's interests and to respect their Convention rights, it would make no sense to leave the adults to starve".

***Mensah v Salford City Council & Bello v Salford City Council* [2014] EWHC 3537 (Admin)** – it is lawful for local authorities to pay subsistence rates equal to the rates paid to refused asylum seekers, if that support is sufficient to meet the needs of the child.

***BCD v Birmingham Children's Trust* [2023] EWHC 137**

This case called for a higher 'welfare standard' of support under section 17 for children whose parents have limited leave to remain with NRPF. This 'welfare standard' of support must promote the child's welfare and therefore is likely to be much higher than asylum support rates. In BCD's case, this rate was equivalent to the fostering allowance of £510 per week.

However, the distinction drawn in this case leaves children whose parents are undocumented on a 'subsistence standard' of support tied to asylum support rates. Although this is good news for those children whose parents have leave, the case draws a discriminatory distinction between the two groups in the allocation of subsistence. Furthermore, Project 17 has concerns that if local authorities currently provide Universal Credit equivalent rates for people who are undocumented (which is rare!), then advocating for the rates set out in the BCD case could encourage local authorities to lower the rate of support for people who are undocumented.

In light of BCD, some families' subsistence may automatically be increased by the local authority. If not, you can use this caselaw to advocate for higher subsistence. You can read more here: https://www.centralenglandlc.org.uk/news/bct-s17-support-families

Accommodation Issues

***R (on the application of AE) v Brent LBC* [2018] EWHC 2574 (Admin)** – The 'reasonableness' of a school commute should take into account not just time but also its affordability and complexity.

Duty to Reassess

***R (CO & Anor) v LB Lewisham Council* (16 June 2017)** – a local authority has a duty to reassess a child in order to properly consider new evidence which may arise.

Refusal of Support

***R (on the application of S and J) v Haringey LBC*** **[2016] EWHC 2692 (Admin)** – this case quashed a refusal of support by Haringey. They had determined that a mother's two children were not in need, as she had failed to provide details of her income and expenditure. However, it emerged that she had not been asked to provide these. This case is potentially useful if a client has not bee***R (JA) v Bexley LBC*** **[2019] EWHC 130 (Admin)**n given the opportunity to respond to claims against them before an assessment is concluded.

***R (on the application of OK) v Barking and Dagenham LBC*** **[2017]** – failure to conduct a full and thorough assessment. Barking & Dagenham had assessed a family 4 times over the course of 3 months, and on each occasion had found the children not to be in need. However, they had not properly considered or investigated the evidence provided by the family, and had not properly justified why that evidence was not to be believed.

***R (on the application of U and U) v Milton Keynes BC*** **[2017] EWHC 3050 (Admin)** – a local authority's conclusion that a family had funds to access accommodation was correct, but their failure to account for the family's inability to rent lawfully (under the Right to Rent) made their decision unlawful. The family might be able to stay in a succession of B&Bs, but this would likely render the children 'in need' in any event.

***R (JA) v Bexley LBC*** **[2019] EWHC 130 (Admin)** – local authority was overly reliant on inconsistencies and gaps in a client's story, and did not properly evaluate other evidence in order to reach a conclusion that a family was not destitute.

Section 4 Asylum Support

***R (ES) v LB Barking and Dagenham*** **[2013] EWHC 691** – a local authority cannot delay carrying out an assessment pending provision of Section 4 support.

***VC & Ors, R (on the application of) v Newcastle City Council*** **[2011] EWHC 2673 (Admin)** – Section 17 support takes precedence over *potential* Section 4 asylum support; a local authority cannot refuse to assess under s17 just because a family may be entitled to s4. A citation from the judgement itself says that: "…in practical terms, and whatever the theoretical possibilities, a local authority supporting a child who is assessed as being "in need" is very unlikely in the general run of such cases to be able to justify the discontinuance of such support by reliance upon section 4". Section 4 support can only be relied on for discharge of s17 duty where the Secretary of State was willing and able (or if not willing could be compelled) to provide Section 4 support to a family, *and* Section 4 support would be sufficient to meet a child's **assessed needs**.[4]

***R (on the application of K) v Newcastle City Council*** **[2011] EWHC 2673** – as above in *VC & Ors*.

Providing support for another adult family member

***R (on the application of OA) v Bexley LBC [2020] EWHC 1107 (Admin)*** **-** the Court decided that local authorities' duties under s17 extend to providing accommodation and family

[4] Public Law Project (2014) *Social Services Support for Destitute Migrant Families: A guide to support under s17 Children Act 1989.* Available online.

support to another adult family member, who is not the parent of the child, if it is reasonably concluded that that person is bringing up the child, looking after him/her, safeguarding and promoting his/her welfare, and thereby meeting the child's needs.

'Adverse Inferences' cases

***R (on the application of AA) v Southwark LBC [2020] EWHC 2487 (Admin)*** **-** the Court reiterated the duty to put relevant matters to the applicant before making an adverse finding of fact, although the local authority is not obliged to adopt a particular procedure (e.g a 'minded to' procedure or a face to face meeting). The local authority is also obliged to make proper enquiries. Proper enquiries are either enquiries suggested by the applicant or enquiries which no reasonable authority could fail to carry out in the circumstances.