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## 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.

It's important that you have specialist advice and are prepared for what to expect before you approach social services wherever possible. You can also take a friend or advocate to the meeting with social services. This may help give you confidence and they can make a note of what the officers say.

### Contacting the Home Office

The local authority has a duty to inform the Home Office that they have been approached for support<sup>1</sup>. This may cause problems if you have failed to comply with removal directions or have no leave to remain and no outstanding applications.

Some local authorities have embedded Home Office enforcement officers within their NRPF Teams. You may feel intimidated when faced with a Home Office worker at the local authority. However, if you have a barrier to your return to your country of origin, you are not at risk of removal. You may have a legal barrier to your return if you have applied to the Home Office for leave to remain, and you are waiting for a decision or you are appealing a refusal.<sup>2</sup> There may also be a practical barrier to your return, if for example, you do not have a passport or cannot afford the airfare.<sup>3</sup>

Further, Home Office policy also states that the Home Office does not detain children<sup>4</sup>.

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<sup>1</sup> See schedule 3 of the Nationality, Immigration and Asylum Act 2002

<sup>2</sup>

<https://www.project17.org.uk/resources/guide-to-accessing-support/guidance-on-section-17-support/are-you-eligible-for-support/child-in-need/human-rights-breach/legal-barrier/>

<sup>3</sup>

<https://www.project17.org.uk/resources/guide-to-accessing-support/guidance-on-section-17-support/are-you-eligible-for-support/child-in-need/human-rights-breach/legal-barrier/practical-barrier/>

<sup>4</sup> See Home Office *Enforcement Instructions and Guidance* Chapter 45

### **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 you have no leave to remain, 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 you 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 your country of origin. If you refuse to return and there are no legal reasons why you need to remain in the UK, the local authority may discharge its duty. However, if there is a legal or practical barrier to your return, the local authority should not offer to fund travel.

### **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 you are asking to be provided with accommodation together and there are no safeguarding concerns for your child beyond the destitution you are seeking support for. You are fully entitled to refuse any such offer but it may make you anxious and less confident about continuing to ask for accommodation for the family together.

Broadly, they can only take children into care if:

- You or others with legal responsibility for the child consent (S.20 Children Act 1989) (Consent must be informed and genuine, not coercive. You do not have to agree. If you do agree, you 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 your child.
- The Police decide to remove your child if they think they are 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 your return to your country of origin, and you refuse to accept support to return home, the local authority can lawfully say they have discharged their duty to your child under section 17 and refuse to support your family beyond that. If this means that your 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. However, depending on the facts of the case and the best interests of your child, this approach may be unlawful. We would recommend seeking legal advice about challenging such a recommendation.

### **Being moved out of the area**

Particularly if you approach 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 your children are in an exam year at school (e.g. taking their GCSEs) or there are significant reasons why your family should remain in the area (e.g. medical treatment or work), it may be possible to make a case for your family to be provided with accommodation locally.

### **Personal questions**

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