



## Challenging inadequate provision of section 17 support

There are often delays in carrying out assessments and providing decisions. Assessments can be inaccurate, and decision-making can be of poor quality. Once support is provided, it is sometimes inadequate to meet the needs of the child or family.

### Subsistence

The High Court determined that any amount which falls below section 4 asylum support rates (£49.18 per person per week)<sup>1</sup> was very unlikely to meet a child's essential needs. Any amount of section 17 subsistence support which falls below this is therefore likely to be challengeable.<sup>2</sup>

A more recent case determined that a higher 'welfare standard' of support should be provided 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 section 4 asylum support rates.<sup>3</sup>

What can I do?

If the amount falls below section 4 and the family receives no other income:

- Request higher subsistence from the local authority and refer to the below case law.
- If there is a negative response, contact a community care solicitor.

If the amount is above section 4 or the family receives other income:

- Request in writing an assessment of the financial support.
- Describe why the subsistence provided is not adequate and what essential living needs are not being met.
- Prepare a list of all the items needed and the cost. Keep receipts for all purchases so they can evidence how the current subsistence is being spent. Fill in an income and expenditure table. You can find a list of helpful resources on our [website](#).

If the amount falls below section 4 or is otherwise inadequate for the families' needs **and** the parents have limited leave to remain with NRPF:

- Follow the steps above and refer explicitly to the *BCD v Birmingham Children's Trust* case, more information can be found below.

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<sup>1</sup> <https://www.gov.uk/asylum-support/what-youll-get> as of April 2024.

<sup>2</sup> *R (VC) v Newcastle CC* [2011] EWHC 2673 (Admin)

<sup>3</sup> *BCD v Birmingham Children's Trust* [2023] EWHC 137 (Admin)

<b>Case law or guidance</b>	<b>Summary</b>
<i>R (VC and others) v Newcastle CC</i> [2011] EWHC 2673 (Admin)	Section 4 asylum support rates are 'intended to provide the minimum support necessary to avoid breach of a person's Convention rights.'
<i>R. (on the application of Mensah) v Salford City Council</i> [2014] EWHC 3537 (Admin)	Determined it is lawful for local authorities use section 4 asylum rates as a guide to determining their own policy for section 17 rates.
<i>R (on the application of PO, KO and RO) v Newham LBC</i> [2014] EWHC 2561 (Admin)	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).
<i>BCD v Birmingham Children's Trust</i> [2023] EWHC 137 (Admin)	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, it was equivalent to the fostering allowance of £510 per week. <sup>4</sup>

## Accommodation

Families may be housed outside of their local area or even town/city. Section 17 accommodation is most commonly provided in shared HMO's, B&Bs, or hostels. Occasionally, families will be offered self-contained accommodation.

As there is so little guidance or caselaw on the adequacy of accommodation, it can be difficult to challenge the standard of accommodation provided.

What can I do?

- If the accommodation is provided outside of the local area, it can be difficult to challenge unless there are compelling reasons to stay in the area (e.g. children taking important exams, important medical appointments in area). Collect evidence of this and advocate directly with the social worker.
- Check if the accommodation is overcrowded by the room or space standard.

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<sup>4</sup> If seeking subsistence at the higher 'welfare standard' of support—please note that 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. Project 17 has concerns that if local authorities currently provide Universal Credit equivalent rates for people who are undocumented, 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.

- If there are disrepair issues, request an assessment from Environmental Health department.
- If the accommodation is shared, check that the property has a HMO license.<sup>5</sup>
- Put concerns in writing to the local authority and request they reassess.
- Provide photographic/video evidence of the property and any evidence of the impact on the child (e.g. supporting medical information, letter from school).

<b>Caselaw or guidance</b>	<b>Summary</b>
Statutory Overcrowding	Room standard and space standard <a href="https://england.shelter.org.uk/housing_advice/repairs/check_if_your_home_is_overcrowded_by_law">https://england.shelter.org.uk/housing_advice/repairs/check_if_your_home_is_overcrowded_by_law</a>
<i>R (on the application of AE) v Brent LBC</i> [2018] EWHC 2574 (Admin)	The reasonableness of a school commute should take into account not just time but also its affordability and complexity.

### Support not for whole family

Sometimes, a local authority will decide to not provide support to the whole family. This is often reflected in the level of subsistence the family receives.

What can I do?

Make sure each family member has been considered in the calculation of subsistence (see previous section on subsistence for more details) and room allocation (see Shelter’s guides).

The local authority might argue that adult dependents (e.g. children over 18) cannot be supported under section 17. This can be addressed by showing that the adult dependent plays a role in safeguarding and promoting the welfare the child under 18, for example by providing childcare while the parent is at work.

<b>Caselaw or guidance</b>	<b>Summary</b>
Section 17(3) CA 1989	“Any service provided by an authority in the exercise of functions conferred on them by this section may be provided for the family of a particular child in need or for any member of his family [..]”  Makes it clear that a local authority has the power to provide support to the entire family.

<sup>5</sup> Each council publishes a public HMO register. Check each individual local authorities’ website for more details.

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

Local authority had erred in its decision to provide financial support solely to the children. The judge determined that as “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.”

### **What to do next?**

Sometimes advocacy alone is not sufficient in changing the local authority's decision. In these cases, you should contact a community care solicitor who can provide legal advice about [Judicial Review](#). Judicial review is a legal procedure that enables the court to assess whether the local authority has acted lawfully. You can find a solicitor on <http://find-legal-advice.justice.gov.uk>