



No Recourse to Public Funds Network

Subsistence for NRPF families supported under section 17 Children Act 1989

No legislation or statutory guidance specifies how much subsistence (financial support) should be provided to a family where a local authority determines that this is necessary to safeguard and promote the welfare of a child in need under section 17 of the Children Act 1989. Following a key judgment by the Court of Appeal, this factsheet sets out the principles by which local authorities must adhere to when determining how much subsistence to provide, along with information about rates paid under other statutory schemes for reference to help inform this decision.

Meeting a child's needs: the law

Section 17(1) of [the Children Act 1989](#) states:

“(1) It shall be the general duty of every local authority (in addition to the other duties imposed on them by this Part)—

- (a) to safeguard and promote the welfare of children within their area who are in need; and*
- (b) so far as is consistent with that duty, to promote the upbringing of such children by their families, by providing a range and level of services appropriate to those children's needs.”*

...

(3) 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, if it is provided with a view to safeguarding or promoting the child's welfare.

...

(6) The services provided by a local authority in the exercise of functions conferred on them by this section may include providing accommodation and giving assistance in kind or in cash.”

Assessing needs of children in NRPF families

In *R (C, T, M and U) v London Borough of Southwark* [2016] [EWCA Civ 707](#), the Court of Appeal examined the lawfulness of the local authority's decision making with regards to the subsistence payments provided to a family, and was very clear that section 17 establishes a target duty which creates a discretion in a local authority to decide how to meet a child's assessed need (paragraph 12).

The Court found that each child's needs are to be individually assessed by reference to the statutory guidance, [Working together to safeguard children](#), and therefore it is not appropriate to follow a separate policy for assessing the needs of NRPF children (paragraphs 16 & 18).

The assessment must consider the best interests of the child and may take into account other factors, for example, the needs of other children and the resources of the local authority (paragraph 17).

Deciding how much subsistence to provide

Local authorities must adopt a rational and consistent approach to decision making in accordance with public law principles, and so must decide what process will be undertaken to determine how much subsistence can be provided and apply this to all supported families.

In *PO v London Borough of Newham* [2014] [EWHC 2561](#), the High Court found that a lack of guidance as to what is normally appropriate with regards to the amount of support paid to families would lead to unjustifiable and unfair differences. With reference to this point, the Court of Appeal in *R (C, T, M and U) v LB Southwark* (2016) provides local authorities with guidance about how to approach determining amounts of financial support to be paid to families (at paragraph 20):

"..That is simply to re-state in practical terms the need for a rational and hence consistent approach to decision making. It permits of appropriately phrased internal guidance or cross-checking that is consistent with the Secretary of State's statutory guidance but does not suggest, let alone approve of a policy or practice of fixing financial support by reference to the support available under other statutory schemes and for other purposes."

In the case of *R (C, T, M and U) v LB Southwark* (2016) the local authority had determined the amount of financial support by undertaking a 'shopping list' exercise on the basis of its needs assessment, repeating this process whenever the family's circumstances changed. This approach was found to be lawful, as the child's needs had been properly assessed and considered in the case in question. However, this practice will require significant staff time and there is a risk that it may result in inconsistent decision making if there is no internal guidance for practitioners to follow.

The Court of Appeal did not consider whether payments for refused asylum seekers under section 4 Home Office asylum support were sufficient to meet a child's needs, but did observe (at paragraph 44) that:

“..a level of support considered adequate simply to avoid destitution in the case of a failed asylum-seeker is unlikely to be sufficient to safeguard and promote the welfare of a child in need and by extension the essential needs of the parent on whom the child depends for care. Ultimately what matters is whether the assessment when completed adequately recognises the needs of the particular child.”

Local authorities need to also be mindful of the High Court’s findings in *PO v London Borough of Newham* [2014]:

- Child benefit is not designed to meet the subsistence needs of children so it is not rational or lawful to provide payments in line with these amounts.
- When it is in the child’s best interests for the family to remain together, payments for the parents should be made in addition to those considered appropriate to meet the needs of the children, but are not required to exceed what is necessary to avoid a breach of the parent’s human rights.
- Failure to make guidance relating to subsistence payments available to those who might be affected by its application is unlawful.
- Lack of complaint from a family does not mean that the local authority can be satisfied that the payments made appropriately meet the child’s needs.

In determining what subsistence support to pay to a family, local authorities can make reference to the amounts set by another public body, for example, Home Office asylum support, but must be satisfied that what is provided will meet the child’s needs. Payments must not be fixed directly to standard rates of support without any scope for flexibility to amend the amounts according to the child’s needs. However, using a basic rate as a starting point would be acceptable so long as the local authority can document how that amount has been reached, there is evidence in the assessment that the child’s needs have been properly considered and the amount provided meets identified needs. It is good practice for the local authority to provide the family with information about their decision making process and details of how the family can request that payments are reviewed.

Rates paid under other statutory schemes

Local authorities may have regard to the rates paid under other statutory schemes when determining what amount of support is necessary to safeguard and promote the welfare of a child in need and to meet the essential needs of parents. The rates in the table below are provided for reference only and are not to be treated as recommended amounts to be paid.

Weekly benefit and asylum support rates (£) per person			
	Welfare benefits (see note A)	Home Office asylum support	
		Section 95	Section 4 (see note B)
Single parent (18+)	73.10	36.95	35.39
Couple (18+)	114.85 (for couple)	73.90	70.78
Child (under 18)	First child - 63.94 (includes family element)	36.95	35.39
	Additional child - 53.46		
Additional payments			
Pregnant mother		3	3
Child under 1		5	5
Child aged 1-3		3	3
Child Benefit (see note A)	First child - 20.70		
	Additional child – 13.70		
Maternity grant	500 (Sure Start grant)	Asylum seeker - 300	250
		Refused asylum seeker - 250	
Free school meals (see note C)	Eligible	Eligible	Not eligible
Pay for own utilities?	Yes	No	No
Pay own rent?	Yes, using housing benefit	No	No

NOTES

A. Welfare benefit rates are calculated as follows:

- Adult amounts apply to [Income Support](#) or [Jobseeker's Allowance](#).
- Child amounts apply to [Child Tax Credit](#) – additional amounts may be paid for a disabled child. Families with children born on/after 6 April 2017 will be subject to a two-child cap and will only receive the family element if at least one child was born before that date. The two-child cap also applies to child benefit.
- Universal credit has replaced these benefits in some areas, so amounts may be slightly different to those stated here.
- A weekly [benefit cap](#) applies: £442.31 (Greater London)/ £384.62 (Outside London)
- Benefit claimants may not receive housing benefit to cover their full rent due to the local housing allowance and benefit cap.

B. A pre-payment card is issued to [section 4 claimants](#) that can be used in specified shops to buy food, clothing and toiletries but not alcohol, tobacco, vehicle fuel or store/gift cards. Additional payments for specified items may also be applied for on a case by case basis.

C. [Free school meals](#) are provided to all children in reception and years one and two in England; some local authorities have policies allowing for free school meals to be paid to all children in other school years but if they do not, then the child would need to meet the eligibility requirements. Most children in NRPF households will not qualify for free school meals where these are not universally provided.