

Citizens Advice Camden, GOSH Information Sheet 7: Community Care

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Take home message

- *‘Community care’ refers to the obligations of local authorities (councils) to provide on-going care to those who need it in the community*
- *It can take the form of services or payments on account*
- *Increasingly, section 17 of the Children Act 1989 is used to support destitute migrant families - though there are risks*
- *Community care decisions can be challenged using robust complaints procedures or judicial review*

What is Community Care law?

- Local authorities (councils) have duties to provide services to meet the needs of those living within their areas. Services may also be designed to support the needs of carers. This is known as ‘community care’.
- Access to community care services is on the basis of a community care assessment carried out by a social worker of the local authority.
- The assessment can result in the provision of services or ‘direct payments’ of money to the family to secure services.
- There are numerous statutory provisions and guidance documents which local authorities have to follow when conducting community care assessments. There are provisions which apply to adults and children; this sheet focuses on the provisions for children.
- Community care services do not count as ‘public funds’ within the Immigration Rules. This means that people with no recourse to public funds restrictions on their visas and EEA and Swiss nationals without a right to reside (see Sheet 8) can access them. However, they may face particular challenges and should be referred to us.

Section 17, Children Act 1989

- The Children Act 1989 was a major overhaul of the law relating to the protection of children and the promotion of their welfare.
- Section 17 of the Act gives local authorities very broad powers to meet the needs of children within their area.

How section 17 works

- Local authorities have a specific duty to carry out needs-led assessments of all children in their area who may be ‘in need’. There are strict requirements of the assessment process, which is guided by the statutory Assessment Framework.
- A child ‘in need’ is any child who:
 - Is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision of services; or
 - Whose health or development is likely to be significantly impaired, or further impaired, without the provision of services; or
 - Is disabled (broadly defined).
- The threshold for being ‘in need’ is very low.
- An assessment must be holistic, needs-led and genuinely participatory; it must adopt a social model of disadvantage and an outcomes focus; and it must be carried out at the earliest opportunity.
- Once an assessment has identified any needs, these should be met by the local authority. The authority could, for example, provide carers, residential short breaks or accommodation.
- What is provided should depend on the individual assessment, though local authorities sometimes (potentially unlawfully) make decisions based on financial criteria.

Destitute migrant families who cannot access mainstream benefits or housing

- Mainstream benefits and housing are considered ‘public funds’ so people with ‘no recourse to public funds’ restrictions cannot get them. Nor can EEA and Swiss nationals without a ‘right to reside’ (see Sheet 8).
- Services and accommodation provided under section 17 of the Children Act 1989 and other community care provisions are not ‘public funds’.
- Families without access to benefits and housing, therefore, must rely on section 17 to avoid destitution. This is particularly so where their child becomes seriously ill and they cannot realistically work. Any foreign national families should be referred to us.

Problems and risks with section 17

- Families relying on section 17 to avoid destitution may face many difficulties and challenges. These could include:
 - If the family do not have regularised immigration status, making the Home Office aware of their presence or expediting a negative immigration decision.
 - A conclusion by the local authority that the family could avoid destitution by returning to their country of origin.
 - Intrusive assessments.
 - Threats to take the children into care and leave the parents homeless.
- All decisions concerning children must be made in their best interests. Anyone who faces such problems should be referred to us.

Challenging section 17 decisions

- Assessments and care plans can sometimes be inadequate. Some local authorities will, for example, only provide support at current Child Benefit levels whatever the needs of the child.
- There is a statutory complaints procedure which all local authorities must follow. Any relevant person can make a complaint about an assessment or its associated care plan. There are very strict deadlines (e.g., 10 working days for responding to a first stage complaint).
- Legal aid is also available to people whose income and savings are below a certain amount. If legal aid funding can be secured, a solicitor and counsel can be instructed to instigate a 'judicial review' of the local authority's decisions.
- Anyone who thinks that they have not been treated fairly by the local authority or whose assessment or care plan was inadequate should be referred to us.

Disclaimer

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Any queries regarding these sheets should be directed to us on 020 7829 8896.