

# Social Services Duties to Homeless Children

August 2016





# Contents

**Introduction**

---

**When Does a Children Act Duty Arise?**

---

**Section 17 or Section 20?**

---

**Immigration Status**

---

**British Children**

---

**Children of EEA Workers**



## Introduction

When a family with children becomes homeless they should first see whether there is a duty under part VII of the Housing Act 1996 for the council to assist them through a homeless application. Social services may have a duty to accommodate children where they are without parents, or if the parents cannot get long term accommodation through a homeless application, for example due to problems with their immigration status or intentional homelessness.

Sometimes social services will threaten to take children into care when their parents become homeless. This can result in the parent being so fearful that they withdraw their application for assistance. The authority cannot take children away from their parents unless the parents give their permission, or the council gets a court order under the Children Act 1989 to do so because of safeguarding issues. The parent needs to be made aware of this.

In most cases, social services have a power under section 17 of the Act to assist the whole family to find accommodation instead of separating the child from them.

Although assistance to house the child's family is normally only a power, and not an outright duty, there is a general duty under Section 17 for social services to promote the upbringing of children by their families, where possible. In practical terms, it is also normally cheaper for children to be housed with their parents or carers than for the family to be separated and the children placed into foster care.



# When Does a Children Act Duty Arise?

The first question for the authority is whether the child is a 'child in need'. This will be the case if:

- s/he is unlikely to achieve or maintain a reasonable standard of health or development without the provision of services by a local authority
- her/his health or development is likely to be significantly impaired, or further impaired, without the provision of such services
- s/he is disabled

The case of *R v London Borough of Barnet ex parte G [2003]* discusses in detail the tests social services should apply to decide whether a duty is owed. The fact that a child is homeless will usually be a strong indication that they are a 'child in need'.

Where there is no one to care for a child in need, or if their carer is genuinely prevented from providing suitable accommodation for them, then there is an absolute duty to accommodate the child under section 20 of the Children Act 1989 and a power to assist the family together under section 17.

Social services will investigate the case thoroughly to make absolutely sure that there is no accommodation available and that the family do not have the means to find accommodation themselves. The council can consider the family's income and any assistance available from friends and family. The applicants must co-operate with the authority's investigations into alternative options. The social worker will also check on the client's immigration status with the Home Office if that is appropriate and have a legal obligation to do so.



## Section 17 or Section 20?

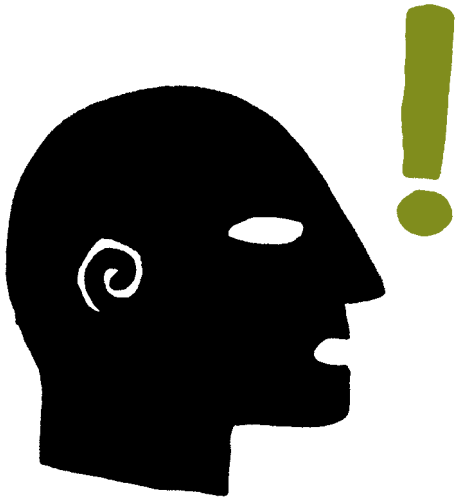
Strictly speaking, it is up to the authority whether to accommodate the child on their own or to assist the whole family. For example, they may act under section 20 and place the child in foster care. Alternatively, they may act under section 17 and provide the whole family with accommodation, or assist them to find their own accommodation, such as paying for their deposit. Whether to assist the whole family or just the child is a decision to be made by the authority in each case.

Separating a child from their parent has been held to be an interference with their right to respect for family life and home under Article 8 of the European Convention on Human Rights. This would only be lawful if it is for a legitimate aim and proportionate under the circumstances. In the case of *R (J) v Enfield LBC [2002]*, it was accepted that separating a child from their parents purely because of lack of accommodation was not sufficient justification for breaching Article 8.

In the recent case of *R (on the application of PK) v Harrow LBC (2014) QBD Admin 30*, a family with children were street homeless and destitute following an eviction. There was no duty to accommodate the family under homelessness legislation and the family was referred to social services. The council argued that it was obliged to provide the children with accommodation under the Children Act 1989, but not the mother. The children applied for judicial review, and interim relief was granted. The High Court held that the council's decision was unlawful as the decision failed to take into account the children's Article 8 rights.

However, sometimes cases do go the other way and the courts have acknowledged that accommodating the family is a power, not a duty, which will not be exercised in every instance. In the case of *R (Bates) v Barking & Dagenham LBC [2012]* the court found that it was not irrational or unlawful for a council to offer to accommodate a child and refuse to help the family. This was a case where the family had already refused an offer of accommodation and the council also believed that there were support networks which the family had not made use of.

If a council refuses to exercise their power to assist the family, or if they do not even accept that the child is 'in need', then the applicant could challenge this by Judicial Review. They would need a specialist solicitor and could contact Civil Legal Advice on 0345 345 4345.



## Immigration Status

The section 20 duty to assist a 'child in need' who is homeless will apply regardless of the child's own nationality or immigration status. However, the power to accommodate the family under s17 is not quite as straightforward. Schedule 3 of the Nationality Immigration and Asylum Act 2002 excludes certain adults from benefiting from the provisions of the Children Acts if they are ineligible for help due to their immigration status. However, the legislation also states that this does *not* prohibit a local authority from providing services to such a person in order to avoid a breach of human rights or rights under the European treaties. As discussed above, it can be argued that separating a child from their family could constitute a breach of Article 8 and this may bring the family back within the Act.

Where accommodation is provided as a consequence of any duty or power placed on a local authority, the letting will be exempt from the 'right to rent' requirements under the Immigration Act 2014. This means that a family without leave to remain, who are unable to approach a private landlord directly, can be accommodated without the landlord committing an offence if the tenancy is arranged by social services under section 17.

Sometimes social services may assist an ineligible family by helping them to return to their country of origin, rather than providing long term accommodation for them in the UK.



## British Children

There are special rules where a British child has parents or carers who are from outside the EEA and who do not have leave to remain in the UK. In some cases, social services will even have a duty, not just a power, to accommodate a parent or carer under section 17 where a British child would be compelled to leave the European Union if their carer had to return to their country of origin, taking the child with them.

Previously, a person who was not an EEA national but who was the parent or primary carer of a British child could have been entitled to assistance under Part VII Housing Act 1996. This was the result of a case called [Ruiz Zambrano](#). Subsequent changes to legislation removed this right and so a non-EEA carer of a British national is no longer eligible for assistance under homelessness law, unless they applied before 8th November 2012.

As a result of the Court of Appeal decision in the cases of *Sanneh* and *HC*, social services now effectively have a duty to accommodate 'Zambrano' carers. This is because the Court accepted that member states are under an obligation to ensure that a British child and their carer are able to stay within the territory of the EU (in practical terms this means staying in the UK). The Court also decided that section 17 assistance would be sufficient and it was not necessary for accommodation to be provided under homeless provisions.

This decision effectively means that social services must provide accommodation and subsistence in 'Zambrano' cases otherwise they will be in breach of their obligations under EU law. The following link gives full details of the case:

<http://www.bailii.org/ew/cases/EWCA/Civ/2015/49.html>

It is important to note that if the child has other family within the UK who they could live with instead then section 17 remains a power and not a duty.



## Children of EEA Workers

Where a child is in education it is important to check whether either of their parents are an EEA national who has worked in the UK at any time while the child was also living in the UK. If so, it is likely that the child's primary carer will be eligible to make a homeless application as they will derivative a right of residence from their child. Once the child of a worker has begun their education in the UK they have a right under the European treaty to complete it. The primary carer is eligible to make a homeless application in order to enable the child to exercise this right. This is often referred to as a 'Baumbast right' after the case which established this principal (Baumbast v Secretary of State for Home Department [2003]).

Unfortunately, this rule does not apply if the parent who was working is a British national, as British nationals can work in the UK without exercising treaty rights. It also does not apply if the child is only in nursery, rather than school education.

Where the 'Baumbast' conditions are fulfilled, the child's primary carer will be eligible to make a homeless application. The carer will be eligible even if they themselves are not an EEA national, and even if the parent who was an EEA worker has since stopped working, left the family, or even left the UK altogether. Where an applicant is eligible to make a homeless application they must take this approach first. Social services will only be obliged to assist a family under the Children Act once any duties owed to them under a homeless application have been exhausted.



## Contact us

If you have any questions about working with the NHAS, or for more information about our service, visit our website **[nhas.org.uk](https://nhas.org.uk)**

Consultancy line **0300 330 0517**,  
Monday to Friday 9am to 6pm

NHAS is a Shelter and Citizens Advice service supported by the Department for Communities and Local Government.

 Funded by  
UK Government



Registered charity number 279057

Shelter

Registered charity number 263710