**BIRMINGHAM CITY COUNCIL/BIRMINGHAM CHILDREN’S TRUST FAMILIES WITH NO RECOURSE TO PUBLIC FUNDS:**

**FINANCIAL SUPPORT POLICY FINAL April 2024**

**Version 4.0**

**April 2024**

**KEY LEGISLATION**

Children Acts 1989 & 2004

Immigration & Asylum Act 1999

Nationality, Immigration & Asylum Act 2002

Child Poverty Act 2010

Equality Act 2010

# INTRODUCTION

* 1. This policy is concerned with financial support by Birmingham City Council (‘the Council’) acting by its agent Birmingham Children’s Trust for the families of children in need in its area whose immigration status means that they have no recourse to public funds (“NRPF”) and as a consequence cannot access mainstream welfare services such as social housing and central government benefits, or who have restricted access on account of their immigration status. This includes families where carers are lawfully present such as (by way of non-exhaustive examples) former *Zambrano* families who have applied for settled status and EU citizens without access to housing and benefits. This policy does not apply to asylum-seekers or others for whom the Home Office has agreed to provide support. The policy should be read alongside the main policy on NRPF in the Trust’s online procedures.
	2. For the purposes of section 11(2) of the Children Act 2004, this policy is an arrangement by which Birmingham Children’s Trust, (‘the Trust’) on behalf of the Council, ensures that the Council’s functions are discharged having regard to the need to safeguard and promote the welfare of children in its area. At all times and for all purposes under this policy the Trust acts for and on behalf of the Council. Hereafter, this policy will refer to the Trust rather than the Council, albeit that the Council retains any statutory duties that are owed.

* 1. This policy reflects the general principles set out below.
	2. A child in need is a child who, in the Trust’s view, meets one or more of the conditions laid down in section 17(10) of the Children Act 1989.
	3. It is the duty of the Trust in respect of the children it finds to be in need, to safeguard and promote their welfare and, so far as is consistent with that duty, to promote their upbringing by their families, by providing a range and level of services appropriate to those needs.
	4. Services may include accommodation, assistance in kind and cash.
	5. Section 17 of the Children Act 1989 (‘section 17’) does not impose a specific housing duty towards each child in need; services provided under the section are not intended to be a substitute for central government welfare benefits.
	6. Relevant services may also be provided to a family member of the child in need if, on assessment, it is agreed that to do so would safeguard and/or promote the child’s welfare.
	7. An adult parent who has no recourse to public funds and is subject to immigration control is likely to be ineligible for section 17 services by reason of Schedule 3 to the Nationality, Immigration & Asylum Act 2002 (NIAA) but when it is in the best interests of the child for the family to remain together payments may be made to the extent that such services are considered necessary to prevent a breach of right under the European Convention on Human Rights.
	8. An assessment must be carried out to determine the needs of a particular child, in line with statutory guidance and with proper consideration of the best interests of the child.
	9. Support for families with NRPF should not be fixed to set rates or other forms of statutory support without any scope for flexibility to ensure the needs of an individual child are met.
	10. Local authorities must undertake a rational and consistent approach to decision making, which may involve cross-checking with internal guidance or other statutory support schemes so long as this does not constrain the local authority's obligation to have regard to the impact of any decision on a child's welfare.
	11. Schedule 3 of the NIAA has the effect of limiting the support that can be given to some categories of persons who have NRPF. Those in the UK unlawfully have their support curtailed by Schedule 3. They are limited to relief from destitution and other breaches of the Human Rights Act 1998 and are “capped” at that level of support, as explained in *BCD v Birmingham Children’s Trust* **[2023] EWHC 137 (Admin)**
	12. Asylum support rates are the absolute minimum necessary to maintain essential living costs for a failed asylum seeker and are unlikely to be sufficient to safeguard and promote the welfare of a child in need and by extension the essential needs of a parent on whom the child depends for care as explained in *R(C,T,M and U v London Borough of Southwark* [2016] EWCA Civ 707 and *BCD v Birmingham Children’s Trust* **[2023] EWHC 137 (Admin).**
	13. Persons lawfully in the UK such as Zambrano carers and EU citizens who may be NRPF in that they have no access to mainstream benefits are still entitled to support under S17 which is wider than the limited provision under Schedule 3 and it unlawful to provide them with the same level of support as children cared for by persons without the right to be in the UK.  They are in a different statutory category to persons without the right to be in the UK, see *BCD v Birmingham Children’s Trust* **[2023] EWHC 137 (Admin)**
	14. Support rates must be kept under review informed by national statistics on inflation and the cost of living.
	15. Support is generally provided on a short-term basis pending voluntary departure from the UK or a decision of the Home Office on a relevant immigration decision and consequent grant of leave to remain or removal action, or the availability of other means of support including (where

permissible) employment. Cases will therefore be reviewed initially after three

months, and thereafter at a maximum of three-monthly intervals at child in need meetings to ascertain the status of any outstanding immigration claim and/or to review the need for continued support. There will be a full re-assessment yearly.

* 1. This policy is not intended to replace parental responsibility for a child where that is available. It proceeds upon the presumption that a child’s welfare and support are primarily the responsibility of both parents.

# CONTEXT

* 1. This policy reflects the following local conditions.
	2. A significant proportion of families living in the Birmingham area have insufficient income or means to take them above the poverty line.
	3. The indicative rates for the statutory category of persons subject to immigration control set out below are considered sufficient, with prudent housekeeping, to be adequate not merely to meet the nutritional and other essential living needs of service users having regard to local prices and supplies, but also to safeguard and/or promote the child’s welfare. They are to be seen in the broader context of a package of support which includes accommodation and other local authority services where the assessment identifies them, being services that Central Government does not provide which augment this support through provision of services where assessed as needed by the child. The policies of other local authorities and approaches in other statutory schemes have been considered to ensure that the rates are not wholly out of line. However, the Trust has set its own rates, having regard to local conditions, and has not merely imported rates from any other source. Utility rates are based on average costs provided by the industry. Amounts of support will vary from case to case and will be the subject of individual assessment.
	4. The Trust supports NRPF families in three ways: (1) by securing suitable accommodation for them where that is necessary; (2) by providing them with other services under Part III of the Children Act 1989 where their assessment supports a need for any such service; and (3) by providing them with financial support under this policy.
	5. This is an updated Policy and it replaces with immediate effect the financial support policy previously in place dated November 2021. There is no statutory duty to consult on this change of policy nor is it considered necessary to do so. This policy will be reviewed within 12 months but can be reviewed earlier if circumstances change and service users and others will be encouraged to provide feedback which will be considered upon that review. This policy applies to both new and existing service users. An existing service user suffering particular hardship as a result of the transition from the previous policy to this policy should let their social worker know who will, if it is considered appropriate to do so, refer the case to the delegated senior manager for consideration.

# DATA PROTECTION

* 1. Personal information given to us is subject to the General Data Protection Regulations Act 2018 and will be used to assess needs and provide services if eligible. The Trust reserves the right to share this information with external agencies who assist in the provision of services and any government departments who have a statutory right to such disclosure. To enable the Trust to carry out the assessment it requires the service users consent/agreement to make enquiries with third parties to assist the assessment process.

# CONDITIONS OF SUPPORT

* 1. Support under this policy is provided on the following conditions.
	2. Each service user submits to a means test and will use his or her best endeavours to provide the Trust with all the information the Trust shall reasonably require to ascertain their financial position.
	3. Where a service user is entitled to apply for leave to remain and/or to remove a restriction or limitation on access to public funds, he must do so immediately unless, in the Trust’s view, exceptional circumstances apply.
	4. A service user with an outstanding immigration application agrees to share information with the Trust as to the nature and progress of that application, including instructing any immigration lawyers engaged on his behalf to provide regular updates to the Trust, and further agrees to take all reasonable steps within his power to expedite the determination of any such application.
	5. Where a service user is entitled to work in the UK and, in the Trust’s view, it is reasonable and practicable for him to take up employment, he must actively seek work and not refuse any reasonable offer of employment.

# PROVISION OF SERVICES

* 1. The services to be provided under this policy are set out in the following paragraphs.
	2. Accommodation and Financial support payments at the indicative rates or the higher rate for parents/carers lawfully present and on the terms set out below dependent on the statutory category of the person with NRPF.
	3. Other services, pursuant to Part 1 of Schedule 1 to the Children Act 1989, to the extent that the Trust considers them appropriate.

# Financial Support

* 1. The indicative rates set out below apply to persons in the statutory categories subject to immigration control. These categories form more than 90% of the persons supported by the Trust
	2. If a service user in any category is found to have relevant means or other resources of their own, including an offer of employment that the Trust considers it reasonable to accept, the rate/s may be reduced accordingly. If an assessment of a parent/carer in any category identifies a need for extra support, consideration will be given to paying a higher rate, the final decision to be that of the delegated senior manager.
	3. The amount of any Child Benefit and/or Child Tax Credit receivable by the service user will be deducted from the total support rate.
	4. Any assets, income or other support (either in UK or home country) the service user has may also be considered and where the Trust believes that it is reasonable for the service user to make use of these assets, income or other support then support from the Trust may be reduced or withheld accordingly.
	5. The indicative rates for persons in categories subject to Schedule 3 are:

|  |
| --- |
| Weekly rates |
| Rates per Person (whether an adult or a child but subject to paragraph 8.5) | £50.53 |
| Nursing money | £5.87 (child under 1 year / expectant mothers)£3.52 (child 1 – 3) |
| Utilities | £8.96£25.71 |

|  |  |
| --- | --- |
| Maternity Grant | £384.16 |

* 1. For the avoidance of doubt when the Trust is providing or paying for accommodation as well as making subsistence payments, the rent or accommodation charge will be paid separately and in addition to the financial support payment.
	2. In the case of the small numbers of parents/carers in the category who are not ineligible under Sch 3 NIAA with the right to be in the UK and where the children, whether British or foreign national, are in need and requiring support the extent of the support will be determined through the Trust assessment of the child’s welfare needs and is not benchmarked to the indicative rates above.
	3. These needs are not subject to NIAA Schedule 3 limits and a “welfare standard” of support will be applied. Each family will be assessed on an individual basis taking into account any additional needs and any additional services or support provided as part of their accommodation package. Support will be guided by welfare benefits levels and will usually be paid at Universal Credit rates, which the Trust has assessed as being an appropriate rate to provide for the essentials of daily living and to meet the Trust’s duty set out at para 1.5 above. For the avoidance of doubt payments under the indicative rates will not be made to parents/carers in this category.

# DISABILITY

* 1. A child may be “in need” because he is disabled. Alternatively, a child may have a disabled parent. The Trust recognises that persons with disability sometimes have higher support needs than others. Accordingly, where an assessment shows that such additional needs exist, by way of adjustment the Trust will consider the payment of an enhanced rate which will generally be a maximum

of 10% uplift of the indicative rate for that person as shown above. However, this is merely a starting point and each case will be considered on its own merits, the final decision to be that of the delegated senior manager.

For families with the right to right to be in the UK Universal Credit rates will usually be applied as explained in para 6.8 above.

# ASSESSMENTS

* 1. All families supported under section 17 are assessed to ensure that the individual needs of the child or children are met and that the Trust is upholding its duty to safeguard and promote the welfare of those children to the extent that is applicable.

# OTHER INCREASES

* 1. The Trust seeks to ensure that its rates are fair for all and allow the efficient management of scarce resources coupled with the fact that despite measures such as NRPF direct families may be supported by the Trust for many years due to Home Office delays in managing applications. However, all rates can be varied initially at the discretion of the NRPF Team Manager on a case-by- case basis on the request of the service user or via social worker assessment. Any such increase must thereafter be referred to the delegated senior manager for approval based upon the child’s assessed needs. If there is any subsequent change in the circumstances of the family, the support payments will be reviewed and recalculated if appropriate.
	2. The amount of financial support may vary, for example:
		+ Support payments may be higher if there are significant additional needs.
		+ Support payments may be higher where a child has been assessed by a social worker to have additional individual needs necessary to promote their welfare and wellbeing.
		+ Support payments may be lower if the family are residing in accommodation which provides for essential living needs.
		+ Support payments will be lower if care needs are being met through an alternative method in accordance with the Care Act 2014.

# WHAT SHOULD THIS MONEY BE USED FOR?

* 1. Payments are intended to cover essential living needs and meet the child’s welfare needs for the families. Financial support should not be saved or transferred to other people.
	2. If in receipt of any additional income the social worker must be informed about that change of circumstances and any other relevant information.
	3. Failure to do this could result in subsistence and/or accommodation being withdrawn.

# HOW WILL PAYMENTS BE MADE?

* 1. The method of payment is a mixture of cash pre-loaded restricted payment card and BACS depending on the circumstances of the family.

# FRAUD

* 1. The Trust has a duty to ensure that taxpayers’ money is appropriately used and to ensure that assistance is provided only where it is genuinely needed. The Trust will therefore investigate any case in which there are proper grounds to doubt the genuineness of the claim, or where the service user has knowingly failed to report a material change in circumstances.

Depending on the severity of the matter, the Trust reserves the right to avail itself of all or any lawful means of recovering over-payments and/or informing the police

# BREACH OF CONDITION OF SUPPORT

* 1. Support provided for in this policy is given on condition that the service user and/or his dependant(s) adheres to the terms and conditions attached to it. Those terms and conditions will be sent to the service user in writing. A breach of the conditions of support may lead to an early suspension or discontinuation of support.
	2. In particular, the service user must keep the Trust fully informed of any material changes in his circumstances and provide promptly and as accurately as possible, when asked, any information the Trust reasonably requires.

# WITHDRAWAL OF SUPPORT

* 1. The Trust will generally provide 14 days’ notice before support is withdrawn. However, in cases where the Trust considers it appropriate to do so, a shorter notice period may be provided. The assessing officer will take all reasonable steps to discuss the matter with the client to ensure that s/he is informed of the reasons.

# EQUALITY ACT DUTIES

* 1. The Trust’s public sector equality duty under the Equality Act 2010 requires it to have due regard, in both the adoption and application of this policy, in relation to persons with a protected characteristic under that Act, to certain goals set out in section 149. In addition, the services the Trust provides under this policy must not discriminate either directly or indirectly against such persons unless any such discrimination is justified as being a proportionate means of achieving a legitimate aim. For the purposes of the Equality Act, the primary aim of this policy is to provide, as part of a broader range of services, an effective and sustainable means of safeguarding and promoting the welfare of children in need without dis-incentivising clients from working (where that is permitted), providing their own means of support or accessing it where it is available, or making their own arrangements to leave the UK (where that is required by the Home Office).
	2. This policy will clearly affect persons with the protected characteristic of “race”. To a lesser although significant extent it will also affect persons with the protected characteristics of “disability” and “sex”, the latter because experience shows that the majority of single parents are women. Children affected by this policy will have the protected characteristic of “age”, as could their parent/s, although this is far more likely if, say, a grandparent is the child’s primary carer. This policy is unlikely to affect persons with other characteristics protected by the Equality Act.
	3. In all four categories identified, this policy is expected to have a positive and beneficial impact because it will enable services to be provided to families who would otherwise be without the means of support or who might find it more difficult to support themselves on account of their protected characteristic/s. Further, by incentivising parents to take responsibility for their own support, it will promote the upbringing of children by their own families.
	4. To the extent that the level of support provided by the indicative rates at the Welfare level might be thought to be too low to safeguard and/or promote the welfare of children in need, or not be conducive to family life, any such impact is likely to be mitigated effectively by the need to carry out a personal assessment in each case, to tailor services to meet specific needs, the provision of accommodation and other services, the disability uplift and the power of the Delegated Manager to authorise higher subsistence payments. With such safeguards in place, it is considered this policy strikes the right balance between meeting needs and promoting welfare within a limited budget. No alternative measure is considered practicable, having regard to the available funding, without compromising essential front-line services.

# COMMENCEMENT, REVIEW & FEEDBACK

* 1. This policy was reviewed on the in March 2024. This review considered the rates of other Local Authorities with the helpful availability of these from 2021 via the published FOI requests through the work of project 17, the current cost of living crisis and inflationary rates. This is a national issue and families with and without recourse to public funds are equally affected in this crisis. Any additional financial support will be based on the individual family’s assessed needs. The Council provides the Trust with a limited amount of finance to discharge its duties to families with no recourse to public funds.
	2. This reviewed policy applies with effect from 1st April 2024 and it supersedes the Trust’s previous policy on the provision of financial payments to the families of children in need who have no recourse to public funds. It will be subject to a general review after twelve months to ensure that it remains fit for the purpose. Service users and others with an interest in this policy may comment upon it by writing to BCT.Legal@birminghamchildrenstrust.co.uk marked clearly “NRPF Policy Review” All such comments will be collated and considered upon the policy review.

# POLICY REVIEW DATE

* 1. This policy will be reviewed by 1st April 2025

# APPENDIX 1

**DEFINITION OF DISABILITY**

1. A person (P) has a disability if:
	1. P has a physical or mental impairment, and
	2. the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.

# Long-term effects

1. The effect of an impairment is long-term if:
	1. it has lasted for at least 12 months,
	2. it is likely to last for at least 12 months, or
	3. it is likely to last for the rest of the life of the person affected.
2. If an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur.

# Severe disfigurement

(1) An impairment which consists of a severe disfigurement is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities.

# Effect of medical treatment

1. An impairment is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities if:
	1. measures are being taken to treat or correct it, and
	2. but for that, it would be likely to have that effect.
2. *“Measures”* includes medical treatment and the use of prosthesis or other aid.
3. Sub-paragraph (1) does not apply:
	1. in relation to the impairment of a person's sight, to the extent that the impairment is, in the person's case, correctable by spectacles or contact lenses.

# Certain medical conditions

1. Cancer, HIV infection and multiple sclerosis are each a disability.
2. HIV infection is infection by a virus capable of causing the Acquired Immune Deficiency Syndrome.

# Progressive conditions

1. This paragraph applies to a person (P) if—
	1. P has a progressive condition,
	2. as a result of that condition P has an impairment which has (or had) an effect on P's ability to carry out normal day-to-day activities, but
	3. the effect is not (or was not) a substantial adverse effect.
2. P is to be taken to have an impairment which has a substantial adverse effect if the condition is likely to result in P having such an impairment.

# Addictions

1. Subject to paragraph (2) below, addiction to alcohol, nicotine or any other substance is to be treated as not amounting to an impairment.
2. Paragraph (1) above does not apply to addiction which was originally the result of administration of medically prescribed drugs or other medical treatment.

# Other conditions not to be treated as impairments

1. The following conditions are to be treated as not amounting to impairments: —
	1. a tendency to set fires,
	2. a tendency to steal,
	3. a tendency to physical or sexual abuse of other persons,
	4. exhibitionism, and
	5. voyeurism.
2. Subject to paragraph (3) below, the condition known as seasonal allergic rhinitis shall be treated as not amounting to an impairment.
3. Paragraph (2) above shall not prevent that condition from being taken into account for where it aggravates the effect of any other condition.

# Tattoos and piercings

A severe disfigurement is not to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities if it consists of:

1. a tattoo (which has not been removed), or
2. a piercing of the body for decorative or other non-medical purposes, including any object attached through the piercing for such purposes.

# Babies and young children

Where a child under six years of age has an impairment which does not have a substantial and long-term adverse effect on the ability of that child to carry out normal day-to-day activities, the impairment is to be taken to have a substantial and long-term adverse effect on the ability of that child to carry out normal day-to-day activities where it would normally have that effect on the ability of a person aged 6 years or over to carry out normal day-to-day activities.

# Persons deemed to have a disability

A person is deemed to have a disability, and hence to be a disabled person, where that person is certified as blind, severely sight impaired, sight impaired or partially sighted by a consultant ophthalmologist.

# - END OF POLICY -