

Charging Policy for Children Looked After by Brighton and Hove City Council under Section 20 Children Act 1989

Policy

It is Brighton and Hove City Council's policy to recoup a contribution from parents towards their child's maintenance, where it is considered reasonable to do so.

This promotes parental responsibility and active involvement in the care of their child. BHCC endeavours to work in partnership with parents wherever possible by encouraging involvement in decision making and contributing to the costs associated with their child's care, providing this is in the best interests of the child.

Section 20 of the Children Act 1989 – provides a duty to Local Authorities to accommodate any child in need in their area who appears to require accommodation as a result of there being no person with PR for the child, the child is lost or has been abandoned or the person who normally provides care is prevented from providing suitable care or accommodation. The Local Authority is not able to provide accommodation to a child under this section if any person with PR objects. Any person with PR can remove a child from accommodation provided under this section. 16 –17-year olds are able to consent to being accommodated under this section.

Roles

Pod Managers and Heads of Service are responsible for ensuring this policy and the procedure is adhered to.

Through appeal, a decision can be referred to the Head of Service.

The child's Social Worker has the key role of undertaking required tasks associated with implementing the procedure and liaising with the parent/s.

The Social Worker is responsible for carrying out any requested financial assessment.

Legal Services may be called on for advice.

AUTHORITY TO VARY THE PROCEDURE

The relevant Head of Service has authority to apply discretion and waive charges in exceptional circumstances, e.g. cases of extreme hardship.

PROCEDURE

This procedure is arranged in the following sections:

Legal Framework

Persons liable to contribute

Financial Assessment and process of collecting contributions

Applying Discretion

Failure to agree to or pay contributions

Equality Impact Assessment

Performance Standards

Appendices:

- A. Note to Parents – Maintaining your Child
- B. Contributions Notice
- C. Contributions Agreement
- D. Statement of Financial Assessment Form
- E. Collecting Contributions Flowchart
- F. S20 Consent Forms/leaflets
- G. Collecting the contribution process and direct debit mandate.

1. Legal Framework

1.1 Paragraph 21 of Part III of Schedule 2 of The Children Act 1989 states:

“Where a local authority is looking after a child (other than under section 21, interim care order or remanded into their care) they shall consider whether they should recover contributions towards the child’s maintenance from any person liable to contribute.”

1.2 Brighton and Hove City Council may only consider recovering contributions when considered reasonable to do so.

1.3 A parent is not liable if in receipt of specified tax credits or social security/welfare benefits.

1.4 The statutory basis for a local authority recovering contributions for looked after children state that the contribution should not be higher than what the local authority would normally pay for a similar child they had placed in foster care. Therefore, the standard foster care rate provides a comparator for what the contribution should be.

1.5 It remains the responsibility of parents to notify HMRC about the child no longer being in their care. The service user needs to understand that failure to do so will likely result in an overpayment being recovered from them or them potentially being liable for investigation into a fraudulent claim.

2. Persons Liable to Contribute

2.1 Each parent of a child under 18 years old is liable to contribute save for exemptions listed below. This is irrespective of their involvement in the child’s life, therefore absent parents are also liable.

2.2 All parents are expected to protect and maintain their children by providing a home. The legislation stipulates that parents who do not have parental responsibility are still required to ensure their child is financially supported.

Exemptions

2.3 There are many exemptions whereby parents would not be liable to contribute, as follows:

- when in receipt of means tested benefits. Parents need to produce a copy of their current welfare benefit entitlement to evidence they are in receipt of these funds and the Social Worker should upload this onto Eclipse.
- The child is subject to an Interim Care Order, Care Order, Emergency Protection Order or subject to Police Protection.
- The child is remanded into Local Authority foster care, or subject to a Youth Rehabilitation Order with an attached Residence Order (Child Arrangement Order).
- The child is detained under S38(6) of the Police and Criminal Evidence Act 1984, or under S92 of the Powers of Criminal Courts (sentencing) Act 2000
- The accommodation is provided as part of an aftercare service under section 117 of The Mental Health Act
- The child is placed with parents under S22(c) of the Children Act 1989
- Parents who have relinquished their child to be adopted will not be charged.

2.4 If parents are separated and one is exempt due to any of the reasons above, the other parent will still be subject to financial assessment.

3. Financial Assessment and Process of Collecting Contributions

3.1 The amount recoverable is set at 50% of the lowest foster care rate for the child's age band, which is considered fair and retrievable. The amount will be adjusted each year to reflect changes in the foster care rate:

For example:

12-18 year old rate of £ 241 per week (*example used for illustrative purposes only-up to date figures must be checked*)

50% = £120.50 per week

As this amount will be collected on a calendar monthly basis the following calculation should be applied:

£120.50 x 52 = £6266 per year:

Divide by 12 = £522.16 per calendar month (preferred method of collection)

3.2 The contribution should be paid by monthly direct debit, the parents need to be asked to sign the direct debit mandate, at the point they are asked to sign the s.20 paperwork. They will be sent a monthly invoice in advance of each direct debit collection. (Appendix G).

3.3 The Note to Parents, Appendix A, refers to an annual review of the parent's contribution. It is the responsibility of the child's social worker to identify whether the parents' financial circumstances have significantly changed at the end of the year in order to trigger any new financial assessment, for example if the parents have changed their working hours. The Note to Parents also places a responsibility on the parents to inform the Council of any change of financial circumstances.

3.4 Assessment and Process of Collecting Contributions

In all circumstances where a child under 16 is to be accommodated under Section 20 of the Children Act 1989, the Social Worker must consider whether recouping contributions from parent/carer is required. Section 2.3 lists all the exemptions. If any of these apply, the Social Worker should record this on the child's record. If the exemption is because they are in receipt of means tested benefits, proof is needed and should be uploaded to the child's record and summarised in a case note record. However, if it appears that one or both parents are not exempt from providing financial contribution or it is not clear, they should be provided with the following financial documents to complete –

- "Notes to Parents – Maintaining your Child" (Appendix A)
- "Statement of Financial Circumstances (Appendix D). This financial assessment should be completed prior to the child being accommodated wherever possible so that parents are fully informed that they retain their parental responsibility and are expected to work in partnership with the department regarding care planning of their child and of the consequences of their decision. Social Workers offer support to ensure the financial assessment is understood and completed. If parents are separated and one is exempt due to reasons under section 2, the other parent will still be subject to a financial assessment.

In cases where parents are not exempt, or it is not clear whether they are exempt, they should complete sections A and B of for "Statement of Financial Circumstances". Section B assesses whether parent/carer is in receipt of means tested benefits.

4. Applying Discretion

4.1 It is the role of the relevant Head of Service to apply discretion on the basis of the family's individual circumstances. This should be based on a briefing assessment provided by the relevant Pod Manager.

4.2 Head of Service will need to consider:

- What the circumstances leading to the child being accommodated are. For example if a single parent was hospitalised for a short period of time and had no one to care for their children it might be considered not worth seeking to recoup costs for this short period.
- Whether there are specific financial pressures affecting the parents that means that strict adherence to this policy is likely to be counter-productive in the context of working towards the child being rehabilitated to the parents.
- Parents of a child with disabilities are subject to the same rules under Part III of Schedule 2 of Children Act 1989. However in certain circumstances where there is assessed to be risk of harm arising from the child's disability that cannot be reduced without the need for accommodation, parents will not be charged. These circumstances could include the following:

A) Those children whose needs, including medical needs, are so complex that the child essentially requires 24 hour care or similar.

B) Those children whose behaviour, as a result of their disability, is so frequently challenging and that it is only reasonable for the authority to offer to accommodate the child as an option of supporting the family – often there will be a significant risk of harm to the child, a sibling or another family member.

C) Those children who are consistently disruptive throughout the night and where no other intervention has been able to ameliorate the impact on the rest of the family.

5. Failure to agree to or pay contributions

5.1 In the event that the financial assessment and process for collecting contributions has been fully implemented and the parent/s are not abiding by the agreement, then Legal Services must be informed.

5.2 The Council may apply for a Contribution Order in the following circumstances:

- A parent has failed to reach an agreement within one month of the contribution notice being served.
- A parent has in writing withdrawn their agreement.
- A parent who formally agreed the contributions by signing a contributions agreement but has not maintained the payments.

5.3 In the above circumstances the matter is to be managed as a civil debt, allowing BHCC to present the matter to the court to seek a Contribution Order pursuant to Schedule 2, Paragraph 23, Children Act 1989. The Legal Services must be contacted in order to gain legal advice about taking such action

5.4 The court may order the payment of any sum up to the amount specified in the notice. Once a court order is made it is enforceable as a civil debt

5.5 Should a parent default on payments contact must be made with Legal Services to consider the appropriateness of the department taking court action to recover any debt.

6. Equality Impact Assessment

This policy considers the needs of all children looked after regardless of gender, age, ethnicity or disability.

7. Performance Standards

7.1 This procedure will be reviewed annually regarding weekly/monthly contributions or sooner if there are changes to legislation.

Appendices are available on One Space