

Brighton and Hove City Council

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

Children's Services Operational Instructions

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## PURPOSE

This procedure informs staff of the actions to be taken when collecting parental contributions toward the cost of their child being looked after by Brighton and Hove City Council. Adherence to this policy will ensure Brighton and Hove City Council are compliant with legislation.

## SCOPE

This applies to all staff involved in the process of accommodating a child into foster care or alternative placement such as residential units. This procedure applies to parents whose children are accommodated by Brighton and Hove City Council under section 20 and it is considered reasonable that they contribute under Schedule 2, Part 111 paragraph 21 of the Children Act 1989.

## POLICY

It is the policy of Brighton and Hove City Council to recoup a contribution from parents, towards their child's maintenance when accommodated under section 20 of the Children Act 1989 where it is considered reasonable to do so

By recouping a contribution, it promotes parental responsibility and active involvement in the care of their child, even when the child is accommodated by the County Council. Brighton and Hove City Council endeavour 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 interest of the child.

## DEFINITIONS

**Parental responsibility (PR)** - defines the rights, responsibilities, and duties a parent has toward their child and their child's property. Birth mother's automatically have PR as do fathers who are married to the mother at the time the child was born. Fathers who are not married to the mother of the child but are registered on the birth certificate have PR; however, the registration or re-registration has to have taken place after December 2003. Fathers without PR are still liable to contribute

**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

Other charges

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

## 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 Irrespective of whether the parents are asked to contribute to the cost of their child being accommodated by the Local Authority, it remains their responsibility to notify the Benefit Agency 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.

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

- When in receipt of income support, any element of child tax credit other than the family element of working tax credit, income-based job seekers allowance, or income related employment support allowance. Any of the elements of the incoming Universal Credit which replace these Income related 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 to e-casefile for the child's record.
- 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 of the contribution expected from parent/s for each child should never be more than the foster care rate. In Brighton and Hove, the rate 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:

In 2019/20 the 12-18 year old rate is £ 241 per week

50% = £120.50 per week

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

$£120.50 \times 52 = £6266$  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 County Council will contact parents to arrange completion of a direct debit mandate and will send a monthly invoice in advance of each direct debit collection.
- 3.3 The Note to Parents, Appendix A, refers to an annual review of the parent's contribution. It will be 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 from the Business Support Financial Team, for example if the parents have started working full time rather than part time. 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 2.4 lists all the exemptions. If any of these apply, the Social Worker makes a note on the child's record that parents are exempt from contributions. If the exemption is because they are in receipt of income support (IS), income related job seekers allowance (JSA) or employment and supported allowances (ESA) then proof is needed and should be uploaded to the child's e-casefile 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 E). 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 Income Support or income based Job Seekers Allowance or

See Flowchart: Appendix E

## 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 the Legal Services must be informed.
- 5.2 The Council can 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**

- 6.1 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.



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## Appendix A

### NOTE TO PARENTS – MAINTAINING YOUR CHILD

#### 1. Contributing to the costs of your child's accommodation and care

When a child is looked after by a Local Authority under Section 20 of the Children Act 1989, which can only happen with parental consent, both birth parents can be required by law to contribute toward the child's maintenance until the child is 16 years of age irrespective of whether or not they have contact with the child.

In certain circumstances, however, the charge may be waived and you will not be required to contribute if:

- You are in receipt of income support, any element of child tax credit other than the family element of working tax credit, income-based job seekers allowance, or income related employment support allowance.
- You have no personal finance from any source.

#### 2. The Amount of Your Contribution

A liable parent will be required to contribute a weekly amount decided after a financial assessment has been completed. The amount will not exceed that paid to local authority foster carers caring for a similar child. This amount is guided by the Department for Education (DfE) recommended south east minimum fostering allowance rates and Brighton and Hove fostering allowance rates which are reviewed annually.

An annual review of your financial circumstances will take place to ensure the contribution remains at a suitable rate in response to any changes to your circumstances and any adjustments made to the DfE recommended fostering allowance. It is understood that the assessment of your financial circumstances is made on the basis of your circumstances at the time of this agreement and you will undertake to notify the County Council if your circumstances change.

#### 3. Specific Circumstances

In cases where parents are separated but are both found to be liable the charge will

be equally divided between the parents.

Where a Maintenance Order is in force in respect of the child, the sum as detailed in the Contribution Agreement will be claimed from the parent who receives the Maintenance Order.

Child Benefit payments normally stop 8 weeks after a child becomes looked after by the Local Authority. If you fail to notify the Department of Work and Pensions (DWP) that your child is being looked after and you continue drawing payments, this may result in the DWP taking action to recover any overpayments.

If you do not agree that you are able to afford to contribute the amount detailed within the contribution notice and you consider this will cause financial hardship this should be evidenced within completion of the financial assessment (any expenditure not listed can be detailed in Section F) and discussed with your child's social worker, for consideration by the Head of Service.

#### **4. Consequences of non-payment**

The County Council is empowered to apply to the Court for a Contribution Order requiring you to make weekly contributions. It is not proposed to make such an application provided that you are willing to enter into such agreement as the County Council may require. Of course, if you do not make your first payment within 1 month of the child(ren) being looked after, or if you do not keep up payments regularly, the County Council has the right to enforce payment by initiating legal proceedings in the courts.

By law it is the duty of the parent of a child under 18 years old who is Looked After by the Local Authority to keep the Local Authority informed of the parents address.

You have a right to appeal against any Order made concerning contributions under the Children Act 1989 and you should seek legal advice on the matter.

#### **5. Methods of Payment**

The contribution should be paid by monthly direct debit, the County Council will contact parents to arrange completion of a direct debit mandate and will send a monthly invoice in advance of each direct debit collection

## Appendix B

### CONTRIBUTION NOTICE

Dear XXXXXX

#### CONTRIBUTION NOTICE

#### RECOUPMENT OF COSTS – CHILDREN LOOKED AFTER BY BRIGHTON AND HOVE CITY COUNCIL

When a child is looked after by a Local Authority with parental consent, both parents can be required by law to contribute towards the child's maintenance.

I enclose a copy of 'Notes to Parents – Maintaining Your Child' and a Contribution Agreement Form which should be completed and returned to your child's social worker at the following address:

*\*Insert social worker's address*

In accordance with Schedule 2, Part III, Paragraph 22, of the Children Act 1989, notice is therefore given to you that as of today's date XXXXXX, as parent of **INSERT CHILDS NAME XXXXX** you are liable to contribute to Brighton and Hove City Council, the weekly sum of £XXXXX in respect of your child until he/she attains the age of 16 years or ceases to be looked after by Brighton and Hove City Council. Whilst the contribution is determined based on a weekly payment wherever possible it is preferred that payments are made on a calendar monthly basis equating to £XXXX per month as specified in the Contribution Agreement.

A first payment is required by XXXX (*insert date – 1 month after the date of this notice*) using any of the methods detailed on the enclosed 'Note to Parents – Maintaining Your Child', convenient to you.

This letter should be construed as, and has the effect of, a Contribution Notice as defined in Schedule 2, Part III, Paragraph 22, of the Children Act 1989.

Your child's social worker will discuss this with you if you want to clarify any particular points.

Yours sincerely

Pod Manager

## Appendix C

### CONTRIBUTION AGREEMENT

**Child's Name:**

**Child's Date of Birth:**

**Child's Address**

The following weekly sum has been determined as the contribution you are required to pay toward your child(ren)'s accommodation and care, provided by Brighton and Hove City Council. This has been decided upon completion of a financial assessment to ensure the agreed sum is reasonable.

Amount payable: £            per week, amounting to £            per calendar month

First payment due on ..... and weekly/monthly hereafter.

I, ..... (insert name) agree to pay charge specified above.

Signed:

Date:

Name:

Relationship to child:

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## Appendix D

### Brighton and Hove City Council

### Statement of Financial Circumstances

Parental Contributions towards a child accommodated or Looked After by East Sussex

**Important notes about the completion of this form:**

Complete all relevant boxes or write "none" or "N/A"

Ensure that the declaration on page 4 is completed (Section G)

Securely attach any supporting documentation

If parents live apart, each parent must complete a separate form

Please indicate reason for completing statement:

First Time Assessment

Change of Circumstances

#### SECTION A: DETAILS OF PARENT(S)

1. Parent 1

Title

Full Name

2. Parent 2

Title

Full Name

3. Preferred correspondence type

Post

Email

4. Email Address

5. Address

Post code

Telephone number

6. Name and date of birth of child(ren) looked after by a Local Authority

7. Name and date of birth of all other children you are responsible for

## SECTION B

1. Parent 1

Are you in receipt of Income Support or income based Job Seekers Allowance or an income-related Employment and Support Allowance?

Yes:

No

2. Parent 2

Are you in receipt of Income Support or income based Job Seekers Allowance or an income-related Employment and Support Allowance?

Yes

No



**SECTION C**

1.	Occupation of parent 1	<input type="text"/>
	Name of Employer	<input type="text"/>
2.	Occupation of parent 2	<input type="text"/>
	Name of Employer	<input type="text"/>

**SECTION D – INCOME OF PARENTS**

	<b>Parent 1 (weekly)</b>	<b>Parent 2 (weekly)</b>
1.	Net PAYE salary/wages	<input type="text"/>
2.	Taxable benefits	<input type="text"/>
3.	Self employed income	<input type="text"/>
4.	Child Benefit (excluding the children who are looked after by the Local Authority)	<input type="text"/>
5.	Sickness/Incapacity Benefit or SDA	<input type="text"/>
6.	State Pension	<input type="text"/>
7.	Private/Company Pension	<input type="text"/>
8.	Pension Credit	<input type="text"/>

9.	Widow's Benefit	<input type="text"/>	<input type="text"/>
10.	War Widow's or Dependents Pension	<input type="text"/>	<input type="text"/>
11.	Working Tax Credit	<input type="text"/>	<input type="text"/>
12.	Child Tax Credit	<input type="text"/>	<input type="text"/>
13.	Attendance Allowance	<input type="text"/>	<input type="text"/>
14.	DLA Mobility Component	<input type="text"/>	<input type="text"/>
15.	Statutory Maternity Allowance	<input type="text"/>	<input type="text"/>
16.	Income from lettings	<input type="text"/>	<input type="text"/>
17.	Income from Lodgers	<input type="text"/>	<input type="text"/>
18.	Bank/Building Society Interest	<input type="text"/>	<input type="text"/>
19.	Income from Share Dividends	<input type="text"/>	<input type="text"/>
<b>TOTAL</b>		<input type="text"/>	<input type="text"/>

**SECTION E – EXPENDITURE OF PARENTS**

**Parent 1 (weekly)**

**Parent 2 (weekly)**

1.	Rent	<input type="text"/>	<input type="text"/>
2.	Mortgage/Endowments	<input type="text"/>	<input type="text"/>
3.	Council Tax	<input type="text"/>	<input type="text"/>
4.	Life Insurance	<input type="text"/>	<input type="text"/>
5.	Maintenance Payments	<input type="text"/>	<input type="text"/>
6.	Private Pension Contributions	<input type="text"/>	<input type="text"/>
7.	Nursery/Childcare Provider	<input type="text"/>	<input type="text"/>
	<b>TOTAL</b>	<input type="text"/>	<input type="text"/>

Please attach photocopied documentary evidence of all figures declared above

**SECTION F: ADDITIONAL INFORMATION**

Please use this section to provide any additional information which may be relevant

## **SECTION G – DECLARATION BY PARENT(S)**

**Please read the following notes carefully and sign the declaration below.**

When a child is looked after by a Local Authority by agreement both parents can be required by law to contribute towards the child's maintenance irrespective of whether or not they have contact with the child. In accordance with Schedule 2, Part 111, Paragraph 22 of the Children Act 1989, County Council considers it is reasonable that you as a parent are liable to pay the County Council a weekly sum as a contribution in respect of your child until he/she attains the age of 16 years or ceases to be looked after by Brighton and Hove City Council.

A parent is not liable to contribute during any period when he/she is in receipt of Income Support or income based Job Seekers Allowance or an income-related Employment and Support Allowance.

A liable parent will be required to contribute a weekly set amount at 50% of the in-house foster care rate for Brighton and Hove Children's Social Care (subject to annual review) for each child looked after by Brighton and Hove City Council.

In cases where parents are separated but are both found to be liable, the charge will be equally divided between the parents.

Where a Maintenance Order is in force in respect of the child, the sum of the Order will be claimed from the parent who receives it. Where the Order is for less than 50% of the foster care rate per week, the balance will be claimed from whichever parent is not exempted from contributing for any of the reasons stated above.

Child Benefit payments normally stop 8 weeks after a child commences to be looked after by the Local Authority. Failure on your part to notify the DWP and continue drawing payments may result in action being taken by the DWP to recover overpayments.

To pay an amount less than 50% of the foster care rate for each child looked after it is understood that such an assessment is made on the basis of your circumstances at the time of this agreement and you will undertake to notify the County Council if your circumstances change (e.g. commenced employment etc).

The County Council is empowered to apply to the Court for a Contribution Order requiring you to make weekly contributions. It is not proposed to make such an application provided that you are willing to enter into such agreement by signing the declaration below. It is understood that if you do not make your first payment within 28 days of the child(ren) being looked after, or if you do not keep up payments regularly, the County Council has the right to enforce payment by instituting legal proceedings in the Courts. Your child's Social Worker will be pleased to discuss with you any particular points you may wish to raise on this matter.

The County Council reserves the right to make such enquiries it may think fit regarding the financial circumstances of parent(s), but you are reminded that the strictest confidence will be observed in the processing of this form. The County Council has a duty under the Data Protection Act 2018 to ensure that the personal data it keeps on people is safe and secure.

I/we certify that the information given on this form is true and complete. I have read and understood the notes above and will notify you immediately with any change or circumstances which may affect my contributions.

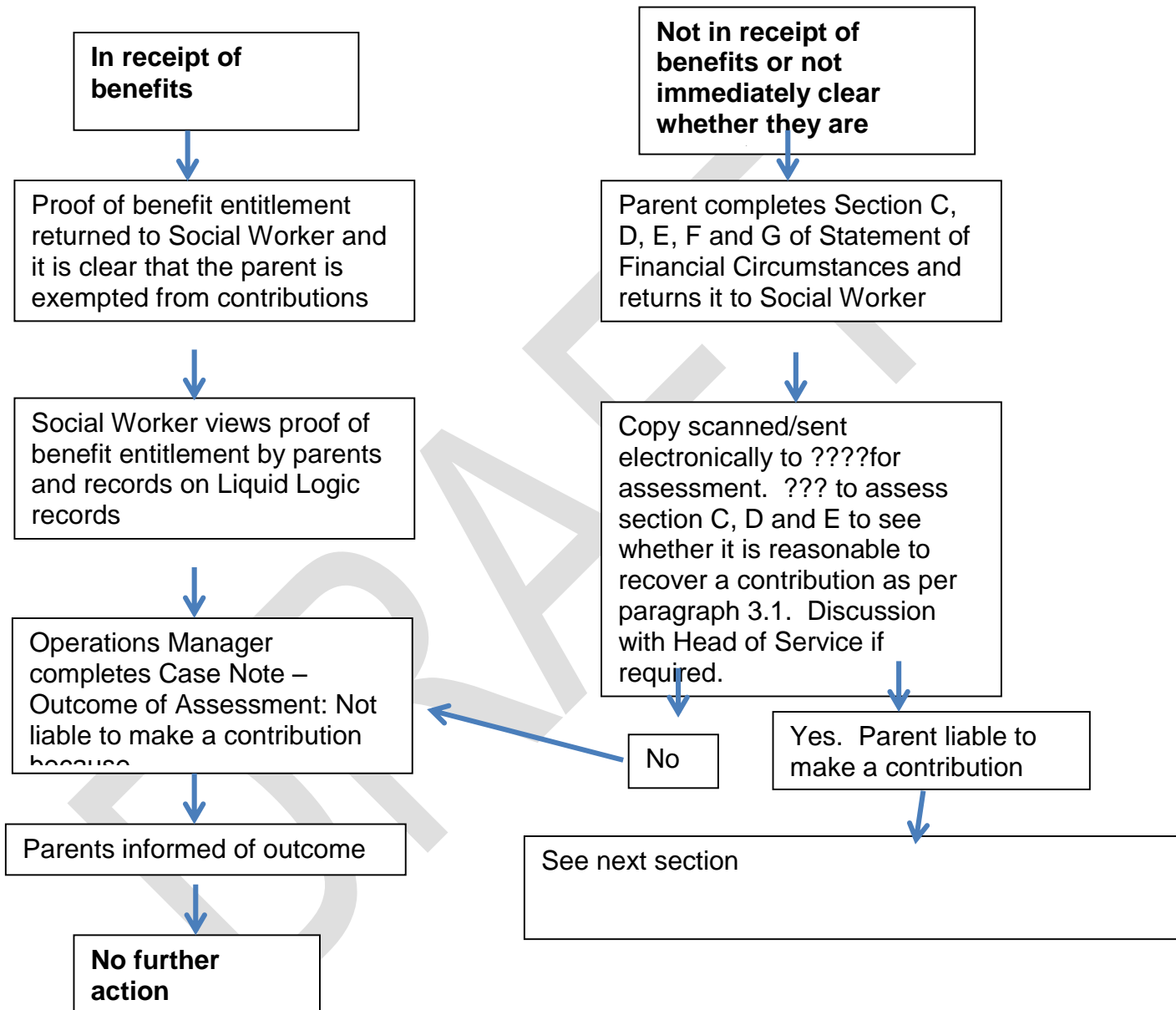
Parent 1

Date

Parent 2

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## Appendix E – Assessment and Process of collecting contributions



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## Parent liable to make a contribution

Business Support Practice Manager returns form to Social Worker with result of assessment of sections C, D and E. Social Worker considers additional parental expenditure in Section F to decide what are essential and priority payments to determine whether there is a case to apply local discretion to level of payments required. Social Worker discusses decision with Practice Manager/Operations Manager/Head of Service to decide whether reduced payments can be agreed. Business Support Practice Manager will store electronic version of Financial Assessment

If level of contribution is deemed to be reasonable and fair but parents continue to refuse to sign/pay then parents can appeal in writing to the Head of Service. If this escalation does not resolve the issue then formal complaints procedure applies. If decision not changed then legal advice required for civil debt

Social Worker completes relevant sections of "Contribution Notice (Appendix B) and "Contribution Agreement (Appendix B) and "Contribution Agreement" (Section C) and sends to parent along with "Notes to Parents – Maintaining your Child (Appendix A) with request that Contribution Agreement is signed and returned. This acts as a formal agreement of the parent's acceptance of the amount recoupable and schedule

Legal processes begun.

Payments start



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