

## **Just for Kids Law and CRAE submission Education Select Committee Inquiry - Children's social care workforce August 2019**

### **About us**

Just for Kids Law (JfKL) is an award winning UK charity that works with and for children and young people to hold those with power to account and fight for wider reform by providing legal representation and advice, direct advocacy and support, and campaigning to ensure children and young people in the UK have their legal rights and entitlements respected and promoted and their voices heard and valued.

The Children's Rights Alliance for England (CRAE) merged into Just for Kids Law in 2015. It works with over 100 members to promote children's rights and monitor government implementation of the UN Convention on the Rights of the Child. CRAE fights for children's rights by listening to what children say, carrying out research to understand what children are going through and challenging those who violate children's rights.

### **Financial cuts to children's services impacting on early intervention**

Through our advocacy and legal work with young people in contact with social services over the last 12 years, we have developed a detailed understanding of the capacity and issues faced by social workers. Over the last nine years, due to the financial cuts experience by local authorities' children's services since 2010<sup>1</sup>, we have seen a marked increase in social workers' caseloads, with some social workers reporting caseloads of over 40. An increase in safeguarding requirements and bureaucracy is also putting immense time pressures on social workers. As discussed in our recent *State of Children's Rights report 2018*, this is combined with an increase in demand for children's services, including higher numbers of children being taken into care, as poverty and homelessness have increased across the country due to benefit cuts and children's needs becoming more complex.<sup>2</sup>

Early intervention funding to local authorities in particular has been cut, from £3.28bn in 2010-11 to £1.17bn by 2017-2018 – a drop of 64%.<sup>3</sup> Clear recommendations to protect early intervention made by the UN Committee and following the UK's Universal Periodic Review are being ignored.<sup>4</sup> A recent survey found 83% of Directors of Children's Services identified a variation in thresholds for support of early help across local authorities as increasingly resources are taken up with the provision of urgent help. Late intervention often leaves families attempting to deal with increasingly complex situations and results in more children being taken into care, and poorer outcomes for these children. We see the effects of these cuts clearly impacting on the lives of the vulnerable children we work with who are supposed to be supported by social services every day in our case work in the following ways.

### **High turnover of social workers**

The environment described above means that we see a huge turnover of social workers for the

<sup>1</sup> Local Government Association (2018) *Moving the conversation on: LGA Autumn Budget Submission to HM Treasury*

<sup>2</sup> Local Government Association (2018) *Making sense: understanding the drivers of variation in spend on children's services* and Stephens, M. (2018) *State of Children's Rights 2018: Safeguarding Briefing 4*

<sup>3</sup> Smith, G. et al (2018) Stop Start: Survival, decline or closure? Children's centres in England

<sup>4</sup> United Nations Universal Periodic Review (2017) United Kingdom, British Overseas Territories and Crown Dependencies Annex to the response to the recommendations received on 4 May 2017

young people we work with. We regularly work with social workers who go off on long term sick due to 'burn out' or being overwhelmed by the pressure of high caseloads. This sadly results in a lack of consistency for vulnerable young people who need stability more than anything in their lives as illustrated by the case study below.

#### **Multiple changes of social worker: Emily's story<sup>5</sup>**

Emily\*, 13 has been in care for two years. In that time she has been in two different foster care placements. Between June 2015 and June 2016, she had nine different social workers. *'I've had too many different social workers. I can't keep up. Since June last year I've had nine.'*

*On my birthday, my social worker left and then I moved placement the day after. My social worker had said "I'll meet you before I go." And then she went without meeting me. After a month no one told me she wasn't going to meet me, or who my new social worker was. No one told me my social worker had changed, I found out from my foster carer.*

*With my very first social worker after I went into care, I waited for her at school one day. She was supposed to pick me up and she didn't even pick me up. I was waiting in school for like two hours. That's when I first lost trust in social workers I can't really talk to someone who is unreliable and who I don't know because they keep changing. It's always someone new. What's the point? They don't know me.*

*The one I've got now, she asks questions but doesn't really try to find out what's going on in my life. Why would I tell her things when I don't even know her? I don't really see a point in them visiting me. When I've had a bad problem, I don't feel okay to tell my social worker. I don't really trust them. I don't know if I'd tell anyone.'*

#### **Lack of experience of social workers**

We have also seen an increase in newly qualified social workers dealing with young people with very complex needs which often impacts on their ability to support them effectively. From our experience, young people's needs are becoming more complex, for example, we are seeing a growth in young people with mental health problems, as evidenced by recent official statistics.<sup>6</sup> We also see a lack of awareness and experience in dealing with growing contemporary issues such as child sexual exploitation (CSE), trafficking drug use and gang involvement. This means there is often a perception and misunderstanding that young people 'consent' to their exploitation and are criminalised or not effectively supported as a result.

#### **Failure to effectively support "harder to reach" young people**

We have found the time constraints on social workers due to high caseloads affects their ability to be proactive and reach out to young people who might have more complex needs and are more difficult to engage. Our practitioners have seen this sadly result in a lack of ambition in the potential of young people, a lack of time to listen properly to their needs and views and as a consequence unfairly stereotyping them as refusing to engage or someone that won't put in any effort so "won't amount to anything" as highlighted in the case study below.

#### **Attitude of social workers towards "harder to reach" young people**

<sup>5</sup> Children's Rights Alliance for England (2015) *Civil Society Alternative Report 2015 to the UN Committee - England*

<sup>6</sup> NHS Digital (2018) *Mental Health of Children and Young People in England, 2017*

Just for Kids Law practitioner:

*'I arrived at my first appointment to support Jack\*, 17 and a looked after child, at a meeting with professionals supporting him. It quickly becomes evident that his "non-engagement" is the prevailing theme.*

*This comment, used far too often as a reason for withdrawing support, reflects the chronic lack of accountably embedded across services. "Non-engagement" may be used to excuse services' inaction. Jack had struggled for nearly 6 months to get out from his hostile homelife, which had often resulted in him being kicked out for minor disagreements. During that time, he was unable to continue with his education, became depressed and started using drugs. Yet the expectation is that now that services are available, he should shake off the effects of recent months.*

*Kids in Jack's situation are doubly prejudiced: once by failing services and again by their response to those failures. Because of services' inaction, this will be Jack's only meeting; he will be 18 next week and no longer eligible for this support.'*

\* Not her real name

### **Increase in gatekeeping practices**

As social workers are being trained in an environment of resource scarcity, we find this is leading to chronic, unspoken gatekeeping from social workers and a resource-led, not child-led approach. Some of our practitioners describe this as a 'chronic coping mechanism' for social workers trying to manage in an intensely difficult environment. They describe it as a culture which travels down the whole local authority and combined with high turnovers find this results in a lack of institutional memory. This means social workers are often failing to uphold their responsibilities to children under relevant legislation. We get regular referrals from social workers who refer to us anonymously, effectively whistle-blowing on their local authorities' inappropriate practice as they are too scared/feel they cannot challenge their managers.

### **Failure to use Section 20 correctly in relation to 16 and 17-year-old children**

One particular area of legislation that we have regularly seen used or interpreted incorrectly for nearly a decade now is Section 20 of The Children Act 1989 in relation to homeless 16 and 17-year-old children. Homeless 16 and 17-year-olds are automatically considered to be in priority need and eligible for support from the council under the Housing Act, but statutory guidance from 2010 (updated in 2018) based on case law states that Section 20 of Children Act 1989 should take precedence and children's services must determine whether any additional duty is owed them under the Children Act 1989.<sup>78</sup> However, we find social workers and LAs frequently refuse to accommodate and/or provide support to these children and we have to advocate on their behalf and most commonly resort to legal action.

Out of 29 cases between June 2018-2019, 30% of the children and young people our legal team represented were children (under 18) who the local authority unlawfully refused to look after under Section 20. Due to involvement from our legal team, 78 % children were provided with accommodation from children's services under Section 20. 55% were young adults who had been refused support under Section 20 when they were children and therefore weren't getting leaving

<sup>7</sup> Housing Act 1996, s.188 & 189

<sup>8</sup> R(G) v London Borough of Southwark (2009) and MHCLG and DfE (2018 updated) *Prevention of homelessness and provision of accommodation for 16 and 17 year old young people who may be homeless and/or require accommodation: Guidance to children's services authorities and local housing authorities about their duties under Part 3 of the Children Act 1989 and Part 7 of the Housing Act 1996 to secure or provide accommodation for homeless 16 and 17 year old young people*

care support. Due to involvement from our legal team, 75% are now treated as Former Relevant Children.

The majority of all cases (76%) of local authorities conceded following a pre-action letter or a complaint from our legal team, showing that this is often about gatekeeping and without our involvement, these young people would not have access to the services, accommodation and support they are entitled to. We also find that from time to time, social workers seem to be genuinely unaware of their duties to 16- and 17-year-old children under Section 20. The two case studies below illustrate some typical cases we see in our work.

#### **Failure to fulfil duties to accommodate a child under Section 20**

Marie\* was 24 when she approached JfKL but has been in unstable accommodation since she was 16. She had lived with her parents as a child but had a difficult relationship with them due to mental health issues causing a lot of instability in her life.

At 16 she stayed with her extended family on a temporary basis due to her parents' mental health deteriorating further. During this time she presented to the local authority asking for assistance. She told the local authority about the impact the instability was having on her and that the stress was causing her thoughts of self-harm, but no support was provided. She returned to her parents' home. It was only after an incident where Marie's parent caused her harm that she was referred to children's services and provided with accommodation, however not as a Looked After Child under Section 20. When Marie asked to be supported by children's services she was informed that her needs only related to housing despite the fact she was only a child and the fact she was requesting support beyond this. Marie moved three times, between then and turning 17 years old.

The continued lack of stability and support had a huge impact on Marie, causing her to become depressed and resulting in her giving up her education. She continued to request support from the local authority but this was continually denied.

A solicitor at JfKL sent a pre-action letter on behalf of Marie, setting out how the local authority had failed to accommodate her when she was a child, stating that she should have been a Looked After Child and therefore should now be a Former Relevant Child and entitled to leaving care support. The local authority finally accepted that Marie is a Former Relevant Child and will be provided with leaving care services.

#### **Failure to intervene early and support a child under Section 20**

Jenna\* approached us at the age of 16, she is now 17 years old. She came to the attention of Children's Services at the age of 11 and was on a Child Protection Plan for some time as a result of her father's inappropriate behaviour towards his children. The Children's Services case with the family was closed but Jenna's father continued to be abusive towards her and she eventually fled the family home, age 15.

She initially sofa-surfed at her sister's flat but was asked to leave at which point she presented to a local authority's homelessness team asking to be accommodated, still 15 at the time. No formal referral was made at this point to Children's Services and she was not housed for another 8 months, during which she lived between her sister's flat and her family home (when her father was not present in the home).

She dropped out of school and her mental health issues worsened. She was eventually housed in a hostel-type accommodation with much older young people also living there. A social worker was eventually allocated to her but she received no support, despite expressly asking for it. Jenna had no choice but to apply for benefits to be able to pay for her accommodation and everyday essentials, despite still being a child. She remained out of school during this time.

After she approached us, we issued a pre-action protocol letter asking that she is moved to a more suitable accommodation and for Section 20 support to be provided to her. The LA conceded within a week of the letter being sent and met with Jenna shortly after. She has been moved to a more suitable accommodation (a self-contained supported living flat), taken off benefits, and is due to start college in September. She is also considering whether to engage in any mental health support/services.

### **Failure to fulfil new duties set on in the Children and Social Work Act 2017**

The new legislation and guidance for local authorities to act as corporate parents to children leaving care, the new Local Offer and the entitlement to a Personal Advisor (PA) until the age of 25, whether or not they are in education are really positive developments.<sup>9</sup> However, this seems to be an instance in which the law improves, at the same time as funding cuts take place, and local authorities are asked to do more with less. As a result, we frequently see local authorities unable to fulfil these duties or trying to avoid providing them. All the local authority should need to keep providing this support is for the young person to request that their case be kept open, and that they would still like PA support. However out of 29 cases from June 2018 – 2019, 20% of young people aged 21-25 years old who sought legal advice were not being provided with adequate leaving care support. Due to involvement from our legal team 83% of young adults between 21-25 years old were provided with adequate leaving care support.

Just for Kids Law practitioner:

*'As advocates we often work with care leavers, who ask us for support in advocating that their case remain open with social services past 21. At first, a reluctance from local authorities to do this seemed to be rooted in some ignorance about the changes to the law. However, now it seems that some local authorities will effectively gatekeep young people from accessing this extra layer of relatively un-boundaried support by giving it a set of conditions which are not laid out in the guidance. One local authority does what they call a post-21 assessment which assesses the young person's needs, and then decides whether or not the young person will continue to have a PA.'*

*I have been working with a 22- year old woman in this local authority who has multiple health conditions, physical and mental, financial issues, and great difficulty with daily functioning/accessing education as a result of her depression. She approached JFKL a year ago when the local authority threatened to close her case, and even after several letters from a lawyer, and multiple professionals meetings to try to resolve the issue, we seem to be skirting around the same threat, and the answer is still the same. If she continues with education, she will be fine, if she doesn't there's no guarantee the local authority can continue to offer her support and a PA, despite her requesting it. She has been told that if she is no longer in education, the LA will close her case, then do an assessment and decide whether or not to reopen it, and they will reserve the right to keep it closed if they believe it to be in her best interests.'*

<sup>9</sup> Children and Social Work Act 2017 Department for Education (2018) *Extending Personal Adviser support to all care leavers to age 25 – Statutory guidance for local authorities*

*She is struggling to understand why they must do it in this order, and why they keep telling her they can't help her until she defines what type of support she needs when she has repeatedly asked for: mental health support, support with her health (for which she now has a carer), support with her education and employment, support with her financial situation (she has only recently come through a period of being in debt). She has been told repeatedly that her PA cannot 'hold her hand', that they cannot continue to support her as they do, for fear of "setting her up to fail" by making her "reliant on services".*

*This narrative is incredibly disempowering, and essentially attempts to make the young person feel they are asking too much, leaning too heavily on services, and trying to squeeze every drop of support they can get.'*

This story is not unusual. Despite the generosity in the wording of the Children and Social Work Act 2017, local authorities are hard pushed to deliver it with this same spirit, and they revert to gatekeeping tactics. Set against the backdrop of the corporate parenting principles in the Children and Social Work Act 2017, which talks about local authorities acting in the manner a good parent would, these tactics appear particularly bleak.

We urge the Committee to consider the issues set out in our submission and the following recommendations.

#### **Recommendations**

1. The government should urgently address the funding gap in children's services for this local government finance settlement and provide additional funding to local authorities struggling to provide early intervention services.
2. The government should continue to invest in its programme to ensure retention and recruitment of social workers, and complete an assessment of the efficacy of current programmes.
3. Local authorities should always offer homeless 16- and 17-year olds accommodation and support under Section 20 of the Children Act 1989 and ensure that they have access to child friendly information about the support they would be entitled to under section 20 in comparison to the support that would be provided by the housing department and that they have access to an independent advocate when making a decision about whether to accept this offer.
4. The government should write to all Directors of Children's Services to ask them to remind social workers of their duties in relation to Section 20 of the Children Act 1989 set out in the statutory guidance *Prevention of homelessness and provision of accommodation for 16 and 17 year old young people who may be homeless and/or require accommodation* to ensure 16- and 17- year olds are offered accommodation and support if they require it.
5. Local authorities should be given training on their duties under Part 3 of the Children Act 1989 and Part 7 of the Housing Act 1996 to secure or provide accommodation for homeless 16 and 17-year-old young people.
6. The government should ensure that sufficient funding is made available to successfully realise the new reforms introduced under the Children and Social Work Act 2017, particularly in relation to Personal Advisers and their new corporate parenting duties.
7. Local authorities should ensure that young people aged up to 25 are pro-actively informed of their entitlement to a Personal Adviser regardless of whether they are in education or not.

*\*All names have been changed*

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