

Sadiq Khan Policy Consultation 2019: Submission from Just for Kids law

About Just for Kids Law

Just for Kids Law (JfKL) is a 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.

We help children and young people navigate their way through challenging times through our unique model of working with individual children and young people which combines direct advocacy and development opportunities with legal advice and representation. JfKL has gained a reputation for taking the evidence from our direct work with individual children and young people to fight for wider reform through strategic litigation and empowering children and young people to campaign. We also draw on our evidence to equip practitioners to work for children's rights and provide them with advice and expertise. Our Youth Justice Legal Centre has been at the forefront of training lawyers in representing children in court.

The Children's Right 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 (CRC). CRAE believes that human rights are a powerful tool in making life better for children. We fight for children's rights by listening to what they say, carrying out research to understand what children are going through and using the law to challenge those who violate children's rights. We campaign for the people in power to change things for children. And we empower children and those who care about children to push for the changes that they want to see.

We welcome the opportunity to feed in our views to the Labour Party on a number of key child rights issues affecting children in London.

A safer and secure London

Introduction

This section of our submission is informed by our work monitoring implementation of the CRC in England, consultation with children, as well as our direct advocacy and legal case work with children and young people who are in conflict with the law. In 2015, Just for Kids Law established the Youth Justice Legal Centre (YJLC) to provide legally accurate information, guidance and training on youth justice law. It aims to raise standards in criminal courts and support lawyers doing vital work representing children and young people across England and Wales.

The unique status of children means they must be treated differently when they come into contact with the criminal justice system. This has been recently set out in General Comment no.24 by the UN

Committee on the Rights of the Child (UN Committee), the treaty monitoring body for the CRC.¹ CRAE's State of Children's Rights in England² report has consistently called for urgent reform of the way children in conflict with the law are treated by police and the criminal justice system. We welcome the positive steps that have been taken by the Mayor, for example, the Young Londoner's Fund, advocating a public health approach to tackling serious violence in the Capital, and making the link between rising numbers of school exclusions and knife crime. In the last decade, there has also been a significant fall in the number of child arrests and first-time entrants to the youth justice system across the country, including in London.

However, little meaningful change has been made to deal with the myriad of issues in the Capital which are not compatible with children's rights. Children coming into contact with the criminal justice system are some of the most vulnerable in our society. They have often suffered neglect and abuse, have care experience and high levels of mental health issues or learning disabilities. Yet despite the 'child-first' approach opined by police chiefs this is far from realised and is backed up by what children and young people tell us. The policing of children and young people in London urgently needs to change.

What more can be done to build trust and respect between the Met Police and the communities they serve in London?

In 2016, CRAE published a briefing which drew on the survey results of nearly 1,000 children in England.³ When asked specifically about their experience of policing, over half (55%) felt that the police did not have a good relationship with children, and close to one in 10 stated that they felt the police harassed children. They described the police as 'rude', 'judgemental' and 'heavy handed'. Our work with children in London supports what children have said in our national research.

It is not surprising that stop and search has been identified by the children we have spoken to as a major concern and its misuse has been harmful to the trust and confidence of some young people in the police. There are no regularly published figures on the use of stop and search on children but a Parliamentary Inquiry found that, between 2009 and 2013, more than one million stop and searches were carried out on children and young people in 26 police forces in England and Wales.⁴ 1,136 of these were on children under the age of criminal responsibility (10 years). A significant proportion of these stops were in London.

A 15 year-old boy with Special Educational Needs told us he was stopped and searched 14 times in one year, and another child said he was stopped on average three times a week.⁵ It is well documented that BAME children are more likely to be stopped and searched than their white peers.

The children we have spoken to have various suggestions about how to develop trust between children and the police, including more opportunities for police and children to meet and talk, and specific education and training for police officers co-led by children and young people who have been in contact with the criminal justice system.

¹ UN Committee on the Rights of the Child (2019) *General Comment No.24: On Children's Rights in the child justice system* https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f24&Lang=en

² Our most recent State of Children's Rights, published in December 2017 can be accessed here: http://crae.org.uk/media/127098/B8_CRAE_POLICINGCJ_2018_WEB.pdf

³ Children's Rights Alliance for England (2016) *Children Speak out on policing and criminal justice*

⁴ All Party Parliamentary Group for Children (2014) *All Party Parliamentary Group for Children Inquiry into 'children and the police': Initial analysis of information request to police forces*

⁵ Children's Rights Alliance for England (2016) *Children Speak out on policing and criminal justice*

The National Police Chief's Council's (NPCC) [National Strategy for the Policing of Children & Young People](#)⁶ sets out a child-centred approach to policing and makes it clear that *'it is crucial that in all encounters with the police those below the age of 18 should be treated as children first.'* It also recognises that *'it is important that young people are not criminalised for behaviour which can be dealt with more appropriately by other means.'* Specifically, the NPCC's Strategy at paragraph 1.3 states that:

Policing must be sophisticated enough to look beyond the blanket negative labelling of young people to identify the small numbers who are serious and persistent offenders. Often for these offenders enforcement may be the most effective tool, but for many others it can be a blunt instrument. Evidence shows that highly punitive sanctions have little impact on recidivism, so enforcement should be considered appropriately and used only where necessary to prevent others from becoming victims. Getting it wrong, especially when it results in the unnecessary criminalisation of C&YP, can mean heavy costs to the individual for life and the wider society.

It is widely acknowledged that contact with the criminal justice system tends to increase the likelihood of offending and approaches that divert children away from the formal criminal justice system are much more effective.⁷

Increased understanding in recent years of child and adolescent development and the causes of offending behaviour has also contributed to the development of trauma-informed services and more appropriate responses to offending. We now know that children's brains are constantly changing and developing at this age, with the part of the brain responsible for judgment, decision-making and impulse control being the slowest to mature.⁸

We have serious concerns that Knife Crime Prevention Orders (KCPOs) will lead to an increased in children and young people being criminalised and will not address the root causes of why children carry knives. The Home Office will be piloting KCPOs in London later this year. It is crucial that the pilot is evaluated in a fully transparent way with participation from key stakeholders and children who have been issued with a KCPO and a full assessment is made on whether they affectively address route causes and of they lead to increased criminalisation of children.

The Mayor of London should ensure:

1. The MPS adopts the NPCC National Strategy for the Policing of Children and Young People and make sure it is implemented in practice with greater focus on the diversion of children out of the formal criminal justice system wherever possible. This must be followed by training for police officers, which includes the participation of children and young people who have had contact with the police and justice system.

⁶ National Police Chiefs' Council (April 2015) *National Strategy for the Policing of Children & Young People*

⁷ See for example, the [National Protocol on Reducing Criminalisation of Looked After Children](#) November 2018 para 1.5 and Reoffending Statistics produced quarterly by the Ministry of Justice and National Statistics, which demonstrate lower reoffending rates for children diverted at the police station than receiving a custodial sentence.

⁸ See <https://thinkneuroscience.wordpress.com/2014/01/22/adolescent-brain-development/> American Medical Association, Amicus Brief in the case of *Roper v Simmons* 543 US 551 (2005) the Supreme Court of the United States.

<https://thinkneuroscience.wordpress.com/2014/01/22/adolescent-brain-development/> Brainwaves –The Royal Society – Module 4 Neuroscience and the law (2011) – A neuroscientific perspective on brain development and criminal responsibility.

2. There is greater participation of children and young people in holding the MPS to account. This could include a MOPAC Children and Young People's Board, which reflects the diversity of children and young people in London and those who have been in contact with the police.
3. That best practice on reducing the decriminalisation of children in London, is shared across Boroughs, for example, the initiative under way in the Borough of Haringey.⁹
4. Ensure that MOPAC is fully involved in the planning, roll-out and evaluation of KCPOs and advocated for the full participation of key stakeholders and children and young people.

Use of force

Over recent years the use of force on children by the MPS has increased considerably. As well as undermining trust, particularly among BAME children who are much more likely to have force used against them than their white peers, this raises considerable concerns around children's safety. Children have told us about the experience of being arrested and have reported that force was often used unnecessarily even when they had been cooperating with the police. Using force or violence against children, especially those who are vulnerable, can result in long-term damage to their mental health as well as causing physical harm and distress. Children described the level of force used against them by police during arrest as '*ridiculous*' and '*over-the top*'.

A 15 year-old boy told us: '*I've had my nose broken before by a police officer*'. A 16 year-old girl said:

'They just grab you and throw you about and use so much force, it's horrible. They strapped my mate up one time, and just grabbed her. They threw her in the van, and she smashed her head...they grabbed her, threw her to the floor, and all her mouth was cut open. She's got massive scabs on her face...they didn't arrest her, they just took her home, because they knew they were in the wrong.' (Girl, 16)

Taser use on children

Worryingly, Tasers are being rolled out to more and more police officers in the Capital and use on children is increasing year on year. This is despite a concerning lack of research into the risks of using tasers on children and the harm they can cause both mentally and physically. The research that is available indicates that children are at a greater risk of harm.¹⁰

In June 2017, the MPS Commissioner announced that more officers will be trained and armed with Taser in London and in September 2019, the Commissioner again announced a further uplift in taser use. These last two uplifts were made without public or stakeholder consultation, despite an MPS Firearms and Taser Reference Group being in place (of which CRAE is a member). We are concerned that the more Taser we have on the streets the more they will be used on children and the more children's safety and mental well-being will be compromised. We also agree with concerns raised by the Chair of the NPCC that some police chiefs fear '*that their increased use damages public relations and undermines the unarmed nature of British policing*'.¹¹

⁹ London Borough of Haringey (2019) *Children and Young People at Risk Strategy 2019-2023*

¹⁰ See for example, Defence Scientific Advisory Council Sub-Committee on the Medical Implications of Less-Lethal Weapons (DOMILL) (2011, amended 2012) *Statement on the Medical Implications of Use of Taser X26 and M26 Less-Lethal Systems on Children and Vulnerable Adults*

¹¹ <https://www.independent.co.uk/news/uk/home-news/tasers-police-uk-10000-government-safety-risk-force-a9123896.html>

Our research raises questions about ‘mission- creep’ and the use of Taser because it is available, rather than because it is necessary or proportionate. Our Freedom of Information requests show that MPS officers are increasingly using Taser on children. In 2008, after the devices were first introduced, officers used them on children 9 times. Latest Home Office figure show that between April 2018 and March 2019 the MPS used Taser on children perceived to be aged between 11 and 17 years 783 times.¹² Taser use on children by the MPS is significantly greater than other police forces in England and Wales, including those which serve large urban areas.¹³

The overuse of Taser on BAME children is particularly concerning. In the first 10 months of 2019, nearly 74% of Tasers use by the MPS were on BAME children. Such shocking statistics require significantly more consideration and scrutiny than there is at present. A key problem is the lack of regularly published, fully disaggregated data by both age and ethnicity.

We also have concerns that the Firearms and Taser Reference Group, established by the MPS, is not an adequate oversight mechanism. It lacks membership from key organisations working on policing issues in London, especially those working directly with children in contact with the criminal justice system. While commendable efforts have been made to start to involve children and young people this initiative remains in its infancy.

Spit-hood use on children

Children have described how traumatic and distressing it is to be hooded,¹⁴ yet despite this and following an initial pilot, spit-hood use has been rolled out across the Capital. Home Office data shows that between April 2018 and March 2019, the MPS used spit-hoods 49 times on children perceived to be between the age of 11 and 17¹⁵. Our FOI requests for 2017 and 2018, revealed that BAME children accounted for 34% of spit-hood use nationally and a disturbing 72% of MPS use.

The Mayor of London should:

5. Ensure that fully disaggregated MPS statistics on Taser and Spit-hood use on children are publicly available to enable effective scrutiny. Such data must be disaggregated by multiple characteristics, for example by age and ethnicity and age and mental health issues.
6. Urgently ensure there is greater scrutiny of the MPS use of force on BAME children and make sure that disproportionality issues are urgently addressed.
7. Improve accountability mechanisms on the use of force on children to include children who have been in contact with the criminal justice system, organisations that work with them, and expert stakeholders
8. Commission research into the impact of Taser use on children, including qualitative research with children who have had taser used on them
9. Prohibit any further uplift in Tasers in the capital

Overnight detention of children in police custody

¹² Home Office (2019) *Police use of force statistics, England and Wales April 2018-March 2019 Tables 1-17*

¹³ *Ibid*

¹⁴ See the case study of Sophie, a disabled 11 year old girl, in CRAE (2016) *State of children's rights in England: Policing and criminal justice*

¹⁵ Home Office (2019) *Police use of force statistics, England and Wales April 2018-March 2019 Tables 1-17*

Police custody can be distressing and is no place for a child. This has been recognised by the NPCC which, in 2017, published a new national strategy which recognised that police custody is not an appropriate place for children. It set out a commitment that police would *'treat all detainees with dignity and respect, proactively protecting their rights, particularly those that are most vulnerable'* and only use custody for children as a last resort¹⁶. Despite a welcome fall in London of the numbers of children being held overnight, and the establishment of an MPS working group, thousands of children are still detained in police cells overnight each year in the Capital. Responses to our most recent FOI requests revealed that in London, 8,275 children were detained overnight and BAME children accounted for nearly two thirds (64%).

Contributing to these high numbers is the failure to transfer children from police custody to local authority accommodation after they have been charged, despite the legal requirements under section 38(6) of the Police and Criminal Evidence Act. The problem is particularly acute in London as there are no secure beds for children. In 2017, the Home Office published a concordat setting out the key actions that government, police and local authorities must take to tackle this problem¹⁷ but there is still much to be done to ensure the ambitions of the protocol are realised, particularly in London.

Just for Kids Law has issued legal challenges to the detention of children in police cells. Some of the young people we have worked with have described their experiences:

Arthur¹⁸ was 17 years old when he was detained in police custody. He said *'I felt as if I had been thrown in a cell left to die. I had no idea how long I would be in there. No one brought me any food or water. No blanket, just a thin fireproof mattress. There was a camera in the cell with you. They could see you going to the toilet that was in the cell. When I was taken between cells, I could hear people yelling and banging and there were guys in full riot gear. I felt like I was in the shark pit'*

Samuel, who has learning difficulties, was 14 years old when he was held in a police cell for two nights. He said he *'just tried to go to sleep, but it was uncomfortable and noisy'* and that *'there was a lot of shouting'*. He said that most of the other people in the police stations were adults and that sometimes they got in fights with the police, which he could hear from his cell. Samuel hardly slept because of the noise and the uncomfortable beds in the cells. He described the police cell as *'dirty and cramped'* but he was not allowed outside to get fresh air.

Ollie, 16 years old, was kept in a police cell for two nights and found the experience traumatising. He self-harmed and was placed on constant supervision because of police concerns over his emotional state. He said *'spending two nights in the cell was horrific – and then being transported to court – I felt like I was an animal in a cage'*.

The Mayor should work with the MPS and London Local Authorities to:

10. Ensure overnight police detention of children is only used as a last resort.
11. Make sure there is sufficient local authority accommodation to ensure that no child spends the night in police cells.

¹⁶ National Police Chiefs Council (2017) *National strategy for police custody*

¹⁷ Home Office (2017) *Concordat on children in custody*

¹⁸ Names have been changed to protect children's anonymity

12. Encourage working groups in each London Borough, made up of representatives from the police and local authorities, to establish local protocols to improve the implementation of the national concordat to improve the implementation of section 38(6) of PACE.
13. Convene a London-wide working group made up of police and local authority representatives to share good practice and discuss solutions to challenges in ensuring children are not detained over-night either pre or post- charge, particularly focusing on the disproportionate numbers of BAME children held in police cells for long periods of time.

Housing, planning and development

Introduction

CRAE supports the Change it! children's campaign for a child right to adequate housing to be realized. It focusses on the use of Bed and Breakfasts and Temporary accommodation used to house children in homeless families. This part of the submission is informed by our work with Change it! many of whom have direct experience of homelessness.

What more can we do with the powers and resources we have to build council, social rented, and other genuinely affordable homes for Londoners?

Increased public investment in social housing is crucial to address London's chronic shortage of housing for low-income families and households. While local authorities have a statutory duty to house homeless families, many are failing to provide safe and secure housing for them, in part due to the insufficiency of suitable housing available to councils.

Huge numbers of children in England are living in homeless families, and continue to be housed in temporary accommodation and illegally accommodated in B&Bs for prolonged periods. As documented in [our report from 2018](#), based on the experiences of children and young people, such accommodation is often overcrowded, unsafe, dirty and totally unsuitable for children. Children and young people describe living in places where they do not feel safe, where they had no room to study or play and where families struggled to prepare food due to lack of facilities. Ellen and Cameron were both living in London when their families became homeless.

Ellen, 12 'I lived in a B&B with my mum for over two months, I was the same age I am now, 12. It was always cold. I don't think there was heating. It's not like when you're at home. There were a lot of strangers around. Some people who lived there were friendly to children because they had kids, but some people weren't. I didn't feel safe. You didn't know who was living there or what they might be capable of.'

Cameron, 11 'We lived in the hostel for eight months when I was 10, I'm 11 now. Me and my dad couldn't afford the rent on our old place, so we had to move. The hostel was damp. It was always cold... If you're a young child and you're in accommodation with people who you don't feel safe with, people who take a lot of alcohol and drugs, I don't think that works. I think they should put them in a different house. Families need their own space.'

Our findings chime with the findings of the London Assembly's Housing Committee, published in May 2019, [Living in Limbo: London's temporary accommodation crisis](#). We welcome the Committee's report and urge the Mayor's office and the Assembly to act on its recommendations.

A report by the Children’s Commissioner for England, [Bleak houses. Tackling the crisis of family homelessness in England](#), has documented the thousands of children growing up in dangerous and unsuitable temporary accommodation, including B&Bs, shipping containers and converted office blocks.

The numbers of children housed in temporary accommodation are especially high in London. According to [recent government figures](#), there were almost 90,000 homeless children living in temporary accommodation in London, between April and June 2019. According to research by Shelter, in England in early 2019 the top ten local authorities with the highest numbers of children in temporary accommodation were all in London¹⁹.

CRAE has drawn attention to the numbers of children in homeless families housed in Bed & Breakfast (B&Bs) accommodation for longer than the 6-week statutory limit. Worryingly, council-owned B&Bs or other hotel-type accommodation are not subject to the 6-week legal limit. Through FOI requests, we obtained information showing that almost half of councils in England were using such accommodation (and the true figure is likely to be higher as we only received information from 58% of councils we contacted). *Inside Housing* found that out of 33 London boroughs 24 owned hostels and, overall, councils owned 275 hostels used for temporary accommodation across the city.²⁰

We urge the Mayor:

14. Make the building of more social housing a priority in efforts to address London’s housing crisis and continue to work with London councils to build more council housing
15. Work with central government and local authorities to significantly increase the share of funding allocated to new social housing in the next iteration of the Affordable Homes Programme
16. Consider setting up a pan-London commission or workstream to find solutions to London’s temporary accommodation crisis, as recommended by the London Assembly’s Housing Committee. Such a workstream should include the voices and experiences of children and young people with experience of homelessness and temporary accommodation
17. Use his role and influencing powers to convene a cross-London forum to develop pan-London quality standards in the use of temporary accommodation across boroughs

How could the Mayor do more to drive up standards in the private rented sector?

Alongside a decline in the building of social housing, the role of the private rented sector (PRS) has been increasing significantly. Private rental tenancies are often insecure and unaffordable, and are pushing more families towards homelessness. The end of assured shorthold tenancy and ‘no fault’ evictions are among the main causes of statutory homelessness, along with unaffordable rents and rent arrears, especially for those on low incomes and dependents on housing benefit to meet housing costs. In addition, the quality of PRS housing is often sub-standard²¹.

We welcome the Mayor’s initiative on rent control and stabilisation, and his support for ending Section 21 ‘no fault’ evictions. Affordable rent and greater security of tenure are both critical to ensuring that households on low incomes or who rely on housing benefit can live in stable and secure homes.

We urge the Mayor to:

¹⁹ Shelter (2019) *Generation Homeless: The numbers behind the story*

²⁰ McCabe J. (2019) ‘Revealed: homeless families face long stays in council-owned hostels’, *Inside Housing*

²¹ University of York Centre for Housing Policy (2018) *The Evolving Private Rented Sector: Its Contribution and Potential*

18. Reform the private rented sector so as to increase security of tenure for households on low incomes and those in receipt of housing benefit
19. Work with London boroughs to increase resources for inspection and enforcement powers, in order to address poor quality and unsafe accommodation in the PRS which is being used to house homeless families
20. Work with London boroughs to develop pan-London quality standards of PRS accommodation which is used as temporary accommodation

What else could Sadiq do within his planning powers to protect Londoners?

The rise of conversions from offices/warehouses to residential, through permitted development rights, has highlighted the dangers of creating ‘housing’ that is not fit for purpose, does not meet national minimum space standards or environmental and health standards, and puts children and families at risk. The Children’s Commissioner and others²² have raised the alarm of homeless families with children being housed in tiny, overcrowded converted office blocks, on or near industrial estates, in totally unsuitable accommodation which poses a risk to their health and wellbeing. These kind of developments put families at risk of overcrowding, environmental pollution, ill-health, crime and lack of amenities and are not suitable spaces for children to develop, play and thrive.

We urge the Mayor to:

21. Use his powers to block conversions carried out under permitted development rights, that do not meet national minimum space and environmental and safety standards and that are unsafe and unsuitable for children and families.

Supporting care leavers at risk of homelessness in London

Introduction

Just for Kids Law works across London to support young people including care leavers with issues relating to housing, social care, education, immigration and criminal justice. In 2018 we worked with 1,060 children and young people, mainly across 31 London boroughs, through our direct casework providing youth advocacy, legal advice and representation and youth opportunities support.

Our advocacy and legal teams regularly see cases of young people aged 16-25 who are leaving or have left the care of their local authority and, for a range of reasons, find themselves sofa surfing or even rough sleeping, unable to access support from their local authority. This inevitably impacts on every aspect of young peoples’ lives including their education or employment and mental health and can have reaching consequences into their adulthood as they struggle to access a stable, secure home.

Background: care leavers and homelessness

The nature of the London housing market creates particular challenges for care leavers; the acute shortage of social housing, financial pressures on boroughs’ housing and children’s services departments

²² <https://www.london.gov.uk/press-releases/assembly/tom-copley/permitted-development-homes-slums-of-the-future>

and cost of private renting all add up to a perfect storm for care leavers looking to secure affordable, stable housing within the area of London where they have grown up.

We welcome the steps the Mayor has already taken to support care leavers in London including supporting the GLA precept charge for boroughs who have introduced the council tax exemption, and the actions taken under the Care Leaver Covenant.

However, without support to secure stable housing, evidence from our London-based casework shows that care leavers can struggle to access employment and education opportunities like those offered through the Covenant. In the following section we outline four areas where the Mayor should take action to improve the provision of housing and homelessness support for care leavers.

Introducing a London-wide scheme for care leavers placed out of borough to access social housing

We welcome the Mayor's commitment to increase the supply of genuinely affordable homes in London and hope that this will go some way towards alleviating some of the pressure on social housing which impacts vulnerable groups' access to housing, including care leavers. In most London boroughs, care leavers are an established priority category for social housing.

However, 41% of all children in care are currently placed 'out of area' meaning they are placed in another borough by their 'home borough' which retains responsibility for them²³. When they are ready to leave care and live independently, they are only eligible to apply for council home in their home borough where they may not have lived for many years, or ever. In practice this means they have to leave vital support networks and familiar areas in order to start afresh in a new location.

Evidence from our casework shows that this is a stumbling block for care leavers at a crucial time in their lives when they are seeking to establish their independence and settle down in a secure, stable home of their own.

This issue is one of local authority allocation policies but is shaped by statutory allocation guidance from 2013²⁴. Reciprocal transfers between two local authorities each with a care leaver with matching entitlements are in theory possible but in practice are extremely rare and care leavers report waiting years for a potential transfer.

The Mayor should:

22. Consider introducing a scheme to centrally coordinate the allocation of social housing to care leavers on a London-wide basis, so that this is not reliant on individual local authorities' capacities and resources and instead can be efficiently managed in a centralised way. This new scheme could learn from existing initiatives including the Pan-London Housing Reciprocal run by Safer London as well as the Housing Moves scheme.

Making the private rented sector more accessible for care leavers

²³ Children's Commissioner (2019), *Pass the parcel: children posted around the care system*

²⁴ Department for Communities and Local Government (2013), *Providing social housing for local people Statutory guidance on social housing allocations for local authorities in England*

Care leavers who are unable to access suitable social housing are likely to end up relying on the private rented sector. However, as Centrepoin have highlighted, care leavers face a number of barriers to accessing private rented accommodation including lack of money for a deposit, local authorities being unwilling to act as guarantors and discrimination by landlords who are unwilling to rent to people in receipt of benefits²⁵.

Although we recognise that the Mayor has no legal powers over the private rented sector, we would urge him to:

23. Work voluntarily with local councils to take steps to make the private rented sector more accessible to care leavers in relation to the issues highlighted above (deposits, guarantors and discrimination), potentially as part of local authorities' care leaver offers.
24. Establish a London-wide deposit scheme administered through the GLA in order to support care leavers to access private rented accommodation.

Broadening the criteria for care leavers at risk of homelessness to access support

It is widely recognised that care leavers are more likely to face homelessness than people who have not been in care: Crisis have found that 25% of homeless people have been in care at some point in their lives²⁶. Centrepoin surveyed care leavers in 2017 and found that 26% have sofa surfed and 14% have slept rough since leaving care²⁷.

At national level, we are campaigning for the government to review the categories which enable care leavers to access support, in particular broadening the homelessness 'priority need' criteria for removing the 'intentional homelessness' test for care leavers.

Under the Housing Act part 7, 18-21s who were looked after between 16-18 (even for 1 day) are priority need. Young people aged 21+ who are vulnerable as a result of being looked after are also priority need; in practice local authorities apply a high threshold and burden of evidence to demonstrate vulnerability which even those who meet the criteria may not be able to provide sufficient evidence. Given that the Children and Social Work Act 2017 extended local authorities' corporate parenting duties to 25, there is a strong argument for the housing duty to be extended in line with this.

Intentional homelessness is another test to access housing, i.e. whether the applicant made his/herself intentionally homeless by leaving accommodation which the local authority considers to be suitable. Reasons which may lead a young person to lose their accommodation include rent arrears or being unable to live independently, despite the fact that care leavers are supposed to be supported by social services in relation to these issues. The APPG on Ending Homelessness had a report in 2017 on Homelessness prevention for care leavers, prison leavers and survivors of domestic violence. In this they raise concerns that intentionality is being used as a way of gatekeeping.²⁸

²⁵ Centrepoin (2017), *From Care to Where?*

²⁶ P. Mackie and I. Thomas, *Nations Apart? Experiences of single homeless people across Great Britain*, London, 2014, Crisis. https://www.crisis.org.uk/media/20608/crisis_nations_apart_2014.pdf

²⁷ Centrepoin (2017), *From care to where? Care leavers' access to accommodation*

²⁸ All-Party Parliamentary Group for Ending Homelessness (2017), *Homelessness prevention for care leavers, prison leavers and survivors of domestic violence*

We would urge the Mayor to lend his support to this issue, given the risk of homelessness amongst care leavers and fact that this situation is exacerbated in London by the housing shortage and acute pressures on councils. The high cost of renting in London also means young people are more likely to get into rent arrears leading to eviction and being classified intentionally homeless.

In particular, the Mayor should:

25. Develop a strategy and establish a task force on supporting homeless care leavers in London. The task force could identify steps which could be taken by central Government, local authorities and the voluntary sector in order to ensure that no young person leaving care is at risk of homelessness. The forthcoming Care Review announced by the Government is presents a key opportunity to feed into and address these issues.

The Mayor should also use his lobbying power to influence central Government to:

26. Extend priority need criteria to include all care leavers up to 25, not just those who can evidence vulnerability.
27. Remove the intentionality test for all care leavers under 25.

Work with London boroughs to improve their responses to homeless 16- and 17-year olds

The law and statutory guidance are clear that 16 and 17 year-olds who are homeless should be assessed and housed under section 20 of the Children Act 1989 and become looked after children. However we regularly see cases of those aged 16 and 17 who become homeless (for example, due to relationship breakdown with their family) and present to their local authority but do not receive a proper assessment and the full package of support they are entitled to. They are instead unlawfully housed under section 17 of the Children Act (which provides much more limited support) or housing legislation. As a consequence, they will not receive their full care leaver entitlements later on, including support from social services up to age 25 and eligibility to apply for social housing when they are ready to live independently. The Children's Society found in 2015 that 12,000 young people aged 16 and 17 present to their local authority as homeless; of these as few as one in five of those who present as homeless get accommodated. And of them, only 20% are accommodated under section 20 of the Children Act 1989 (and become a looked after child) as required by the statutory guidance on the provision of accommodation for homeless 16 and 17-year-olds.²⁹

Just for Kids Law regularly brings legal challenges against local authorities in London in relation to this issue; 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. 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.

²⁹ The Children's Society (2015), *Getting the house in order: keeping homeless older teenagers safe*

We are committed to working with local authorities and networks, including London Councils, in order to raise local authorities' awareness of their duties and bring about a change in practice in the way local authorities respond to homeless 16- and 17-year olds.

The Mayor should:

28. Use his convening power to coordinate action by local authorities in London to help them to learn from good practice and improve poor practice. This would help ensure that no homeless young person aged 16 or 17 is turned away or refused the support they are entitled to.

Health and education

Introduction

Just for Kids Law has lawyers and youth advocates who support young people through the process of challenging school exclusions in London. We advise children on their legal rights and entitlements and provide representation in exclusion reviews and discrimination appeals. Our youth advocates work with young people to secure support from health and special education services before, during and after an exclusion. Our participation team work with young people to process the experience of exclusion, express their feelings and inform our work on effecting systemic change in this area. This part of our submission is informed by our legal practice and our work with children who have been excluded from school.

How can Sadiq support and improve the education and health of the most vulnerable people in our communities?

Exclusions and vulnerable children

The number of school exclusions, both permanent and fixed term, have soared by 56% since 2011.³⁰ There is also evidence to suggest that the unlawful practice of off-rolling – informally removing a young person from the school's register – is increasing and is now widespread.³¹ Department for Education (DFE) statistics consistently show that the young people being formally excluded are disproportionately the most vulnerable in society.³² Young people with special educational needs are excluded at a rate of five to one when compared to their peers. Children on free school meals are around four times more likely to be excluded and children from the 10% most deprived areas are almost twice as likely to be permanently excluded as those from the 10% of least deprived areas. Off-rolling is, by its nature, harder to obtain detailed figures for as unofficial exclusions typically go wholly unrecorded. However, research into unexplained exits from school by the Education Policy Institute indicates that more than 75% of all students who experience an unexplained exit from school have at least one vulnerability.³³

³⁰ Department for Education published exclusion statistics record 5080 permanent exclusions in 2010/2011 and 7900 in 2017/2018

³¹ Jo Hutchinson and Whitney Crenna-Jennings of the Education Policy Institute (October 2019) *Unexplained pupil exits from school: further analysis and data by multi-academy trust and local authority*. See key findings on page 9: "we now estimate that around one in ten pupils (10.1 per cent of the total cohort) who reached year 11 in 2017 experienced an unexplained exit at some point during their time at secondary school. This represents an increase of just over one percentage point from 2014, when that figure stood at 9.0 per cent". https://epi.org.uk/wp-content/uploads/2019/10/Unexplained-pupil-moves_LAs-MATs_EPI-2019.pdf

³² Department for Education (2018) *Exclusion Statistics for year 2017/2018*

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/828028/National_tables_ex1718v2.xlsx

³³ Ibid page 26.

Just for Kids Law have been working to support young people facing school exclusion in the Capital for a decade. In this time our advisors have seen that, overwhelmingly, it is vulnerable young people who are excluded, whether officially or otherwise. From JfKL's experience, the DfE statistics likely understate this because, whilst they do show that young people with SEND are hugely vulnerable, these statistics cannot account for young people who have never been added to the SEN register when they should have been. They also cannot account for children who have experienced adverse childhood experiences such as domestic violence, sexual abuse or criminal exploitation. In Just for Kids Law's casework experience, if these factors could be reflected in the published statistics, the national picture would be even more concerning, evidencing that vulnerable children make up the overwhelming majority of all exclusions.

Early intervention and the crisis in SEND support

Early and targeted intervention for young people who are experiencing unaddressed additional needs is critical to reducing the number of avoidable exclusions.³⁴ In addition, this is a legal requirement that schools must follow to investigate the possibility that disruptive behaviour is the result of unmet need, and act to reduce the risk of permanent exclusion.³⁵ Through Just for Kids Law's casework we find that huge number of exclusions result from behaviours linked to additional, unaddressed needs. Even more concerning is the fact that the largest number of permanent exclusions are for "persistent disruptive behaviour",³⁶ which is the term schools use when exclusion does not result from a single incident, but repeated disruptive incidents of a potentially lower severity.

This is concerning because persistent disruptive behaviour evidences that resulting exclusions were predictable as they are often preceded by a series of fixed term exclusions or other form of disciplinary interventions. As above, the law says that in such circumstances schools should be taking serious and purposeful steps to intervene and prevent the situation from reaching a permanent exclusion. Just for Kids Law finds that, time and time again, schools spot a pattern of escalating or persistent disruptive behaviour, but do not fulfil this responsibility meaning that the resulting permanent exclusion is all but inevitable.

This issue of inaction on behalf of schools may in part be due to a shift in the focus of behaviour policies of schools, which are increasingly moving toward strict or "zero-tolerance" models. Evidence suggests that this shift is contributing to the rising number of exclusions.³⁷

However, even for schools that have adopted a more inclusive approach, there is also a crisis in SEND funding, and associated services, which makes it difficult for schools to take effective action to intervene

³⁴ Jane Evans (2010) *Not present and not correct: understanding and preventing school exclusions*. <https://www.bl.uk/collection-items/not-present-and-not-correct-understanding-and-preventing-school-exclusions>

See also: London Assembly Education Panel (April 2019) *Preventing Secondary School Exclusions*. The report links exclusions to unaddressed need and establishes that a failure to intervene early may be driving rising exclusion numbers.

https://www.london.gov.uk/sites/default/files/preventing_secondary_school_exclusions_report.pdf

³⁵ DfE Statutory Guidance (2019) *Exclusion from maintained schools, academies and pupil referral units in England*. See the Key Points and paragraph 22

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/641418/20170831_Exclusion_Stat_guidance_Web_version.pdf

³⁶ DfE summary of official exclusion statistics for academic year 2017/2018.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/820773/Permanent_and_fixed_period_exclusions_2017_to_2018_-_main_text.pdf

³⁷ Education Select Committee (2018) *Forgotten children: alternative provision and the scandal of ever increasing exclusions*. See paragraph 25 <https://publications.parliament.uk/pa/cm201719/cmselect/cmeduc/342/342.pdf>

early even with all the best will in the world.³⁸ Whilst we welcome the extra £700 million for children with SEND in 2020/21 announced by the Government last year, this is only a short term investment and will not solve the huge funding gap and systematic changes needed to the SEN system.

The funding gap means that schools struggle to support children who have SEN, but who do not have an Education, Health and Care Plan (“EHCP”). This is because money provided to schools in this way is not calculated to meet individual need and is not ringfenced to a particular child.³⁹ This causes more families to apply for an EHCP in order to guarantee themselves the funding they need. This is because EHCPs will require the additional money needed and guarantee that it will be allocated to the necessary interventions. This has led to a rise in the number of EHCP applications every year since 2010.⁴⁰ For the year 2016-2017 alone, the number of applications nationwide rose by 17%.⁴¹ Statistics for London authorities are not immediately available but from Just for Kids Law’s casework experience there is reason to believe it will reflect national figures. We can see from national figures that London local authorities struggle to issue plans within the lawful timeframe of 20 weeks. Some boroughs have very poor success rates with Newham succeeding in only 2% of cases and Enfield in 4% of cases. This means that young people with high level needs, who are hugely vulnerable to exclusion, are left without the support they need and Just for Kids Law have found repeated instances of young people permanently excluded whilst waiting for an EHCP to come into effect.

Local authorities struggle to cope with this rise in demand for access to their own pot of high needs funding, which causes them to refuse a huge number of applications that go on to be granted on appeal to a judge in First Tier Tribunal. Applications to the First Tier Tribunal rose by 20% in the year 2017 to 2018 alone.⁴² Of those appeals, families win 89% of cases.⁴³ This evidences the desperation of local authorities, who will gate keep cases that, in Just for Kids Laws’ experience, they are destined to lose on appeal.

This has created a system in which people with a lawful right to support might never get it, or might have to fight for it for so long that, in the meantime, they are excluded from school. SEND funding shortfalls have led to a system that simply cannot meet demand and the most vulnerable children fall through the gaps.

The irony is that places in pupil referral units (“PRUs”), where excluded children typically end up, cost vastly more than places in mainstream education.⁴⁴ In addition, as described below, children in PRUs are more vulnerable to becoming involved in violent crime as victim or perpetrator which, aside from the huge personal harm to those impacted, adds further to the cost that can be traced directly back to a failure to provide support when a need first becomes apparent.

To ensure more early intervention support for children with SEND, the Mayor should to:

³⁸ Local government association (June 2019) *SEND crisis: 130 extra children with special needs being supported by councils every day*. <https://www.local.gov.uk/about/news/send-crisis-130-extra-children-special-needs-being-supported-councils-every-day>

³⁹ This is known as “delegated funding”. Local authorities provide it to maintained schools and academies receive it direct from the Education and Skills Funding Agency.

⁴⁰ DfE statistics *Statements of SEN and EHC plans: England, 2018*. Page 8.

⁴¹ Ibid

⁴² Matt Kerr <https://www.specialneedsjungle.com/what-costs-103-7-million-and-makes-disabled-children-miserable/>

⁴³ Ibid.

⁴⁴ Response to question to Secretary of State for Education (January 2018). The estimated average cost of a place in a PRU nationally is £10,000. <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2019-01-22/211308>

29. Influence central government to allocate greater and sustained funding for SEND early intervention with a focus on inclusive mainstream education as part of the next Spending Review.
30. Create new funding for inclusive education programmes in London focussed on early intervention to facilitate support in mainstream settings and help reduce the impact of disproportionate and inappropriate disciplinary responses to behavioural issues resulting from SEND.
31. Create new funding streams to help ensure schools in London have more resources and incentive to investigate unmet need and employ effective pastoral, therapeutic and educational support to help children and mitigate the risk of exclusion.

Accountability and off-rolling

Off-rolling typically describes the process of removing a young person from a school's register, or encouraging them to be removed, where the benefit of that removal belongs to the school rather than the young person.⁴⁵ For example, this might include attempts to game league table results by removing young people who are underperforming academically. The Timpson report addressed this issue and recommended that schools retain responsibility for the grades of young people that are excluded from their school.⁴⁶ This is a positive recommendation, but the risk is that schools will be incentivised to encourage the practice of off-rolling so that they are not subject to this level of accountability.

It is therefore also promising that the Government has consulted on the introduction of a duty for all young people who leave mainstream education to have their exits registered with the local authority.⁴⁷ This would tackle the potential unintended consequences that may come with the increase in accountability that schools have for children who are formally permanently excluded.

To tackle off-rolling the Mayor should:

32. Use his influence to lobby central Government for the urgent implementation of Timpson's recommendation 14 - that schools retain responsibility for the grades of young people that are excluded from their school.
33. Use his influence to lobby central government for the urgent implementation of the recommended new duties on schools and local authorities to maintain a register of all school leavers, and children not in school.
34. Use his convening power to encourage local authorities to take proactive steps to check the status of school leavers and work with Ofsted to challenge schools to justify unexplained school exits.

Disproportionate numbers of children excluded from BAME backgrounds.

As described above, there is huge disproportionality between young people of some ethnic backgrounds in exclusion statistics. Black Caribbean, as well as Traveller, Gypsy and Roma and children are most at risk of exclusion.⁴⁸ It is hugely disappointing that the Timpson review did not attempt to explore this issue or

⁴⁵ (2018) *Ofsted School inspection update* See page 8.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/742258/School_inspection_update_-_special_edition_September_2018.pdf

⁴⁶ Edward Timpson (2019) *Timpson review of school exclusions*. Recommendation 14.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/807862/Timpson_review.pdf

⁴⁷ DfE Children not in school consultation published April 2019.

⁴⁸ Department for Education and National Statistics (2019) *Permanent and fixed period exclusions in England 2017 to 2018*

make any recommendations on this given that the Review itself was recommended by the Race Disparity Unit.

The ethnic makeup of staff and, in particular heads and senior management in London schools fails to reflect the students and families they are serving.⁴⁹ Young people tell us that this underrepresentation means that staff are less likely to understand the experience of people of their ethnic background in the education system and may be more likely to perpetuate the instances of systemic racial disadvantage that contribute to this disproportionality in exclusions.

Just for Kids Law observed this when representing a young person of Black Caribbean background who was repeatedly excluded for having afro hair that she was told to but would not straighten. She told us that some subject teachers would express sympathy to her in confidence, but she felt that senior leadership, of predominantly white backgrounds, did not understand that the effect of their demands was to undermine her sense of identity and cause her to feel like they were attempting to ‘westernise’ her appearance in order for her to be allowed to continue to learn.

The Timpson review did make some recommendations on this topic, urging central government to take up a program to improve representation in senior management.⁵⁰ The Mayor’s consultation invites consultees to provide responses on areas including how the Mayor can work to “ensure London continues to attract and retain the best talent to work in our health and education sectors”. Measures taken in this area in education should focus on improvements in representation in school senior management.

The Mayor should do this by committing to:

35. Launch a taskforce or urgent review into the reasons Black Caribbean children are disproportionately excluded in London schools and create an action plan to tackle this.
36. Establishing funding to support and incentivise educators from underrepresented backgrounds to engage in courses and training geared toward senior management positions in education in line with Timpson’s recommendation number 4. This can also be affected by lobbying national government to urgently implement this recommendation, as well as creating funds for London specific programmes.
37. Using his influence amongst local authorities, multi-academy trusts and individual schools to encourage the adoption of diversity policies that strive to establish equality of opportunities and close the gap in appointments to senior positions amongst people of underrepresented ethnic backgrounds.

The process of school exclusion

Challenging unlawful school exclusions can be a next to impossible process for families to do effectively. Young people and families have to be able to apply education law, discrimination law, human rights law and the general principals of public law in challenges.⁵¹ They have to learn all this relevant information at a time that they are already in crisis and have only 15 school days at most, from the date of the exclusion

⁴⁹ See Timpson review at recommendation 4.

⁵⁰ Ibid.

⁵¹ Statutory Guidance (2017) *Exclusion from maintained schools, academies and pupil referral units in England*. Paragraph 6 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/641418/20170831_Exclusion_Stat_guidance_Web_version.pdf

to the date of the first hearing, to learn it.⁵² The initial hearing takes place before a panel of the school's governors who have a relationship with the headteacher and are therefore not independent of the school. Whilst there is an appeal stage known as an Independent Review Panel, they cannot bind a school to their decision⁵³ and statistics show that in two thirds of cases where the governors decision is found to be flawed by the appeal panels,⁵⁴ the school governors fail to reinstate the young person regardless.

This systematically denies families the opportunity to access justice and leaves vulnerable young people with no effective recourse even in circumstances when the law is on their side, and the exclusion has been found by an independent panel to be unlawful. The charity, Justice, recently produced the report "Challenging School Exclusions" which provided a comprehensive set of recommendations to fix this broken system.⁵⁵

The Mayor should commit to:

38. Use his lobbying power to influence the Department for Education's position. This year, the Department for Education is set to review their statutory exclusions guidance and produce an updated document. The Mayor should commit to lobbying for a system that can effectively provide access to justice for families and, in the long run, implement all the recommendations of the Challenging School Exclusions report.
39. Use his convening power to raise awareness around this issue amongst local authority governors' services who can encourage individual school boards of governors to commit to respecting the assessment of appeal bodies and reinstating young people where their exclusion is found to be flawed.

Exclusions and violent crime

There is a clear and near-universally acknowledged statistical link between exclusions and young people becoming involved in violent crime as either victim or perpetrator.⁵⁶ The National Crime Agency lists risk factors to child criminal exploitation and lists placement in a pupil referral unit as one such indicator.⁵⁷ Barnardo's and Ofsted have gone so far as to identify cases where a young person's exclusion has been engineered by people who are seeking to criminally exploit them, in order to make them easier to control.⁵⁸ Being out of mainstream school itself increases your vulnerability to violent crime as either victim of perpetrator

⁵² Ibid paragraph 55.

⁵³ Ibid paragraph 138.

⁵⁴ DfE summary of official exclusion statistics for academic year 2017/2018.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/820773/Permanent_and_fixed_period_exclusions_2017_to_2018_-_main_text.pdf

⁵⁵ <https://justice.org.uk/wp-content/uploads/2019/11/Challenging-School-Exclusions-JUSTICE.pdf>

⁵⁶ The Mayor has acknowledged this link and wrote to the Prime Minister to urge action on this issue in March 2019, it is not further evidenced here

⁵⁷ NCA Intelligence assessment (2018) *County lines drug supply, vulnerability and harm*. See paragraph 30

<https://nationalcrimeagency.gov.uk/who-we-are/publications/257-county-lines-drug-supply-vulnerability-and-harm-2018/fil>

⁵⁸ APPG on Knife Crime (October 2019) *Back to School*. See page 14. <https://www.aep.org.uk/news/appg-knife-crime-report-on-link-between-school-exclusions-knife/>

Ofsted (March 2019) *Safeguarding children and young people in education from knife crime: Lessons from London*.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/785055/Knife_crime_safeguarding_children_and_young_people_110319.pdf

Just of Kids Law work as youth justice specialists, providing criminal defence to young people in the police station and courts and have observed over many years that the number of young people in the criminal justice system who have experience of exclusion is enormous.

This link follows logically. Young people in PRUs typically are supervised for fewer hours per week than those in mainstream. Some disappear from the education system altogether and do not attend alternative provision. Just for Kids Law has seen this happen, particularly where families opt not to send children to a PRU for fear of the impact, even where there is no other placement on the table. Children have reported to us that a process of institutionalisation occurs in PRUs, with exposure to violence, drugs and gang associations being experienced that had not been present in mainstream school.

These factors conspire to create a system that takes the country's most vulnerable young people and exposes them to heightened risks of contact with offending, victimisation and the youth justice system, at a time when they are most in need of support.

This effect was present for a headteacher of a large East London sixth form who told Just for Kids Law she has had to stop excluding people because there is no adequate plan for what comes after. The young people she had previously excluded took the behaviours they had displayed inside the school and began exhibiting them just outside the school gate. All of them ended up on the street during the day which lead to them committing offenses, often involving current students of the school, and being summoned to appear in criminal courts.

This is the exclusion to prison pipeline in action. The Mayor should make it a priority to break this link for London's young people. He can do this by:

40. Tackling the perpetuation of exploitation of young people who are already being controlled by criminal gangs, or who are put at risk of exclusion by their exploitation. He should use his convening power to encourage local authorities, multi-academy trusts and individual schools to adopt policies that commit them to assess a young person's vulnerability to exploitation prior to exclusion and, where it is clear that the exclusion results from criminal exploitation, or will lead to criminal exploitation, then pastoral and safeguarding steps will be taken in place of, or, in tandem with any disciplinary action.
41. Funding extra-curricular opportunities for young people at risk of exploitation and youth violence to become involved in communities outside of school which are constructive and where there is contact with adults, such as through youth centres and organised activities.

We would welcome the opportunity to meet and provide further evidence on any of the issues outlined above, for further information please contact: Natalie Williams, Policy and Public Affairs Manager nwilliams@crae.org.uk