

Just for Kids Law/CRAE's Submission to the Care Review's Case for Change

August 2021

Key messages

- **Children's and young people's (CYP) rights and voices are not at the heart of the care system. Adopting a child rights framework would provide the Care Review with a clear vision and purpose around which to centre recommendations to reform the care system, increase the quality of services and improve CYP's outcomes.** To ensure CYP's voices are at the heart of the system (in line with article 12 of the CRC), a similar approach should be used in all policy-making including in drafting the legislation coming out of the Care Review and in creating all policies and practices at central and local levels.
- **Access to good-quality, independent youth advocacy is also key to centring CYP's voices and improving their outcomes.** It is crucial that we build a system which is more flexible and focused on fulfilling CYP's needs holistically, instead of siloed working. A culture of collaboration must be built within local authorities' services and in partnership with voluntary services.
- **The children's social care system requires additional ring-fenced funding after huge cuts to children's services over the past decade, as well as reforms.** The impact of austerity has been deeply felt by communities and cuts to benefits, local services, in particular early intervention, and the lack of affordable housing and social housing have had a knock-on effect on children and families needing further and more complex interventions from children's social care.
- **Children who are remanded to custody *must* retain looked-after child status.** CYP coming into contact with the police and criminal justice system are some of the most vulnerable in our society and often have the most complex needs, having also had previous contact with the social care system, and require additional access to statutory services.
- **The system is not built for and does not work for older teenagers.** We see more and more the effect of the adultification of older teenagers who find themselves on the edge of care but end up left without any support. Every year, thousands of 16- and 17-year-olds faced with homelessness are housed under provisions which do not entitle them to any support from children's services and end up homeless again once they turn 18. More than half are housed in unregulated settings but the Government's planned reforms will not benefit this group of children, putting them at risk of being further marginalised.
- **Children who are criminally exploited (mostly older teenagers) continue to be seen as offenders rather than victims,** which contributes to an inconsistent safeguarding response, and therefore a lack of adequate joined up support from statutory services.
- **CYP are faced with frequent cliff edges during their journey through the care system – at 18, 21 and again at 25.** Better transition planning and a greater flexibility of approach must be put in place to appropriately support these CYP into young adulthood, enabling access to the appropriate services and later independence, instead of making them vulnerable to issues with their housing, mental health, etc.
- **Care-experienced young people are over-represented in the homeless population;** once they end up in the already complex homelessness system, they are faced with many additional barriers to accessing support. These barriers are not adequately examined in the Case for Change.

About this submission

Our response to the Case for Change focuses on areas of leaving care, housing and homelessness, criminal justice and children's rights which we feel were not sufficiently examined – or omitted entirely – by the Case for Change. It is based on what we have seen through decades of advocacy and legal case

work, policy expertise, as well as consultations with our staff and some of the young people we work with.¹

About Just for Kids Law and the Children's Rights Alliance for England

Founded in 2006 [Just for Kids Law](#) (JfKL) works with, and for, children and young people to hold those with power to account, and to 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 and works with over 100 members to promote children's rights and monitor government implementation of the UN Convention on the Rights of the Child.

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Chapter 1: The Context

10. In Chapter One we set out that if we are going to improve children's social care we need a clear vision and purpose about what we are trying to achieve and that we want to hear from everyone with an interest in the review about what this should be. One way of doing this is through this form, as well as speaking directly to children, families and others. With this in mind, what do you think the purpose of children's social care should be?

The purpose of children's social care should be to ensure all children live in a supportive, protective and caring environment that promotes their full potential, whether this is with their own family or, where that is not in the child's best interests, in a suitable alternative environment.² As such, it is disappointing that the Case for Change only referred to children's rights once. **We believe that children's rights, their best interests, wishes and feelings must be firmly at the centre of any children's social care system.**

Children's and young people's rights

To achieve this, **children's rights must be at the heart of all policy-making.** In practice this means that:

- **The Government should fully and directly incorporate the UN Convention on the Rights of the Child (CRC) into domestic law.**
- **The Government should additionally introduce a mandatory and transparent system of Child Rights Impact Assessments (CRIAs) to be used in policy development and budgetary decision-making at the beginning of the policy-development process to ensure the CRC is fully implemented.**
- **The Government should reinstate the Minister for Children to attend Cabinet to help facilitate cross-Whitehall working and ensure children's needs and rights (including those in the social care system) are at the heart of Government policy-making, particularly as we recover from Covid-19 pandemic.**

¹ In July 2021 we worked with six care-experienced young people aged 20-25 to take part in a focus group on housing and homelessness with a member of the Care Review team. We recognise that this was not a representative sample of care-experienced CYP but it provided a useful snapshot of young people's views on the children's social care system. We also held a session with our staff (advocates and legal practitioners) to gather their views.

² UN Committee on the Rights of the Child (2010) *Guidelines for the Alternative Care of Children*
<https://bettercarenetwork.org/sites/default/files/Guidelines%20for%20the%20Alternative%20Care%20of%20Children%20-%20English.pdf>

The Care Review should adopt a child rights framework in its work, as was first suggested by the May 2021 sector-wide statement from the 'coalition of coalitions',³ as it would provide the Review with the 'clear vision and purpose' needed to rebuild the children's social care system. A draft of CRAE's new briefing on using CRIAs has been shared with the Review team⁴ and the children's rights team at the Department for Education has offered their expertise to support the Review team in completing a CRIA as the recommendations are developed. We also encourage the Review team to examine the UN Committee on the Rights of the Child's [Guidelines for Alternative Care](#) for more information on how the CRC should be implemented in relation to children's social care.

- **The Care Review should adopt a child rights approach and complete CRIAs on the recommendations as they develop.**

A children's rights approach must also be followed for all the legislative reforms which will come out of the Care Review. In practice in children's social care, this means seeing CYP as a whole person instead of focusing on their status of being care-experienced/migrant etc. Work with children must be holistic and to be sufficiently flexible to be able to respond to the child's actual needs.

- **Children should also be involved in the development of all policies and their voices should be at the centre of any proceedings involving them – including through active teaching about rights and entitlements and an active advocacy offer.**

These principles must be integrated in all policies across local authorities and all professionals should take part in regular training to put these in place in practice.

Children's and young people's voices

The CRC makes clear that article 12 and children's rights to have their voices and wishes and feelings heard and for this to have due weight is fundamental to ensuring there is a child rights approach to the care system. Currently the right of CYP to have their views taken into account in all decisions that affect them is not systematically realised, whether on a strategic or individual level. At national level, children are rarely involved in policy-making and there is no permanent structure or plan to facilitate systematic participation.⁵ Particular groups of children are less likely to have their voices heard, for example, disabled children or children under 10.⁶ Despite pockets of good practice, reports show the extent to which children are listened to by professionals often relies on the commitment of individuals.⁷ We regularly see this in our work with children and the conversations we have had to inform this work.

Young people have said that when they are asked for their views, wishes and feelings, they are not always provided with a safe space to share issues. One young person was asked in front of her kinship carer how she was doing in her new placement and did not feel comfortable raising issues she was experiencing. Our front-line staff⁸ tell us that professionals often start from a position of not believing the young people who approach them: "Abuse in the system is not really spoken about, this is often ignored quite a lot and it's causing so much harm. When we do raise it, it is often dismissed by local

³ As part of the Alliance for Children in Care and Care Leavers, JfKL and CRAE signed up to this joint statement on "Children's rights and the care review" <https://www.nyas.net/wp-content/uploads/Sector-wide-Submission-on-Childrens-Rights-England-Care-Review-21.05.2021.pdf>

⁴ CRAE (2021) *Using children's rights approaches in policy and public affairs: Best practice paper Using Children's Rights Impact Assessments to improve policy making for children*

⁵ CRAE (2020) *England Civil Society Submission to the United Nations Committee on the Rights of the Child to inform its List of Issues Prior to Reporting (LOIPR)* http://www.crae.org.uk/media/129724/CRAE_LOIPR_09-DEC-20.pdf

⁶ CRAE (2017) *Children speak out on living in care* http://www.crae.org.uk/media/121456/CRAE_children-speak-out-on-living-in-care_E.pdf

⁷ See for example: Ofsted, Care Quality Commission, HM Inspectorate of Constabulary, and HM Inspectorate of Probation (2018) *Growing up neglected: a multi-agency response to older children* <https://www.gov.uk/government/publications/growing-up-neglected-a-multi-agency-response-to-older-children>

⁸ Just for Kids Law provides services to children and young people, including through our teams of solicitors and youth advocates.

authorities. The focus shouldn't be on the best interests of the local authority but the interests of the child" (young person)

Creating structures and processes to ensure CYP's participation in policy-making and in the decisions which affect them is critical to creating and leading high-quality, safe services.

- **The Government should ensure there are adequate mechanisms to allow the systematic participation of children in decision-making at national and local level and these are appropriately funded.**

Access to youth advocacy

There is patchy access to good quality, independent youth advocacy. Currently, legal provisions for youth advocacy are spread out across laws and regulations and children's entitlement to advocacy are vague and limited to only certain groups. Youth advocacy is key in centring CYP's voices and their wishes and feelings. The young people we consulted raised that a key issue is that CYP are not actively informed of what their rights and entitlements are at all stages of their involvement with the system and do not know what mechanisms are available to them if they have a complaint. One young person said in relation to their bad experiences in an unregulated placement "*At the time I didn't know my legal rights and what I could do about it*".

- **Youth advocacy should be extended to all CYP who come into contact with statutory services and an 'active' advocacy offer should be put in place, similar to Wales.**

The Government will be consulting on updated advocacy standards in 2021 and this process must be linked up with the Care Review. Youth advocacy must be led by the voices, wishes and feelings of the individuals they represent and not focused on the person's best interests. Its purpose is to give back their agency to CYP, teach them about their rights and entitlements and promote self-advocacy. This is not always achieved by commissioned services as they can be too limited by their contracts (e.g. a time limit on the support provided, funding for only specific groups of young people or specific situations). Our youth advocates have heard from their clients that they valued our independence and that "*their experience of other [commissioned] advocates has been that they sided with the local authority, or they felt they could not really trust them because they share an office with their social worker or their child's social worker*". Good quality independent youth advocacy services must be available across England.

11. We want to know whether we have missed or misunderstood any significant issues or evidence. With that in mind do you have any other comments about the contents of this chapter, including our interpretation of evidence?

Impact of austerity and cuts to children's services

The number of children in care has continued to rise (by 24% since 2010). Generally, situations need to reach a crisis point before social services get involved because of restricted resources and children who enter the care system are typically older with more complex needs. Between 2015 and 2020, the number of children who entered care aged 16 or 17 went from 4,930 to 6,210.⁹ At the same time, local authority spending on early intervention services for children has fallen dramatically by 48% since 2010, with the cost of supporting a looked-after child increasing by more than 20%.¹⁰ This has led to huge cuts to universal early help services such as youth clubs, children's centres but also CYP's mental health and

⁹ Department for Education (2020) *Children looked after in England including adoption: 2019 to 2020* <https://explore-education-statistics.service.gov.uk/find-statistics/children-looked-after-in-england-including-adoptions/2020#releaseHeadlines-summary>

¹⁰ Action for Children, National Children's Bureau, NSPCC, The Children's Society, and Barnardo's (2020) *Children and young people's services: Funding and spending 2010/11 to 2019/20* <https://www.probonoeconomics.com/Handlers/Download.ashx?IDMF=fca940e7-7923-4eb3-90d3-be345f067017>

other preventative services. Our experience of working in this area is that very often these restricted resources lead to gatekeeping of the limited resources. But we recognise that it is equally unproductive to blame front-line staff for issues with the system. We see first-hand in our work that even the best professionals cannot work well in a broken system. We see this leading to staff burn-out and poor staff retention, which further contributes to poor quality support for CYP who interact with local authority services.

The wider context of austerity has a significant impact on homelessness and the rising need for children's social care interventions. Benefits and the current minimum wage are much too low to cover average living costs, especially in cities, and keep working individuals and families in poverty.¹¹ This has a particular impact on CYP as they are entitled to lower benefits and a lower minimum wage. Cuts to mental health funding has meant that more people do not get the support they need until they reach crisis point,¹² often leading to the involvement of the state and criminalisation. Good quality, stable private rented housing is not affordable for people on low incomes but local authorities do not have enough social housing to accommodate those low-income households.¹³ All of this keeps low-income families struggling and can contribute to relationships breaking down and/or involvement with children's services.

It's also crucial to note that austerity and cuts to services have had a disproportionate impact on already minoritised groups, including Black and minority ethnic groups,¹⁴ in parallel with the disproportionate representation of BAME children in the children's social care system.¹⁵

- **The conclusions of the Care Review and any proposed reforms to children's social care must acknowledge the impact of the wider context of austerity, cuts to statutory services and the spiralling local government deficit and ensure that any proposed reforms are sufficiently funded with proper investment in early intervention.**

Over-represented children in the youth justice system

Despite the custodial population being at a record low, recent evidence provided in the experimental statistics by the Youth Justice Board and Ministry of Justice revealed that in the year ending March 2019 over half of children (56%) were assessed to be a current or previous Child in Need.¹⁶ Specifically, 18% were considered to have a current status around this and 38% had a previous status. Almost a third (30%) of children sentenced to custody were assessed to be an Eligible Child and those with an Eligible Child status accounted for 15% of the proportion of children assessed.

We know from national statistics data provided by the Department for Education that children in care are more likely to be unnecessarily criminalised – looked-after children are between three and five times as likely as their peers to be made a subject of a formal youth justice disposal.¹⁷ However, these figures are most certainly an underestimation since they only include children who have been continuously

¹¹ Child Poverty Action Group (2021) *Universal Credit: what needs to change to make it fit for children and families?* https://cpag.org.uk/sites/default/files/files/policypost/UC_What_needs_to_change.pdf

¹² Young Minds (2 September 2019) 'Huge gaps in early support for young people with mental health problems' <https://www.youngminds.org.uk/about-us/media-centre/press-releases/huge-gaps-in-early-support-for-young-people-with-mental-health-problems/>

¹³ Centrepoint (2021) *A year like no other: Youth homelessness during the COVID pandemic* <https://centrepoint.org.uk/media/4773/a-year-like-no-other.pdf>

¹⁴ The Women's Budget Group, Runnymede Trust, Coventry Women's Voices and RECLAIM (2017) *Intersection inequalities: the impact of austerity on Black and Minority Ethnic women in the UK* <https://www.runnymedetrust.org/uploads/publications/Intersecting%20Inequalities.pdf>

¹⁵ UK Government (2021) *Ethnicity facts and figures: Adopted and looked-after children* <https://www.ethnicity-facts-figures.service.gov.uk/health/social-care/adopted-and-looked-after-children/latest#by-ethnicity-looked-after-and-adopted-children>

¹⁶ Ministry of Justice and Youth Justice Board (2020) *Assessing the needs of sentenced children in the Youth Justice System* <https://www.gov.uk/government/statistics/assessing-the-needs-of-sentenced-children-in-the-youth-justice-system>

¹⁷ Department for Education (2019) *Children looked after in England including adoption: 2018 to 2019* <https://www.gov.uk/government/statistics/assessing-the-needs-of-sentenced-children-in-the-youth-justice-system>

looked after for at least 12 months. Nearly half (49%) of children who become looked after retain this status for shorter than one year.

A national protocol on reducing unnecessary criminalisation of looked-after children and care leavers was introduced in 2018.¹⁸ While positive, there does not appear to be any meaningful monitoring of its success or implementation. Through our casework, we know that looked-after children and care leavers within the secure estate are not receiving the level of support they are entitled to whilst in custody and upon release from custody, as provided under the Children Act 1989 and relevant guidance and regulations.

CYP coming into contact with the police and criminal justice system are some of the most vulnerable in our society and often have the most complex needs, having also had previous contact with the social care system. Removing looked-after child status from those who are remanded to custody would amount to a failure to recognise their additional vulnerabilities and safeguard their welfare. Most importantly, children who are remanded to custody require additional access to statutory services in light of their complex needs and particular vulnerabilities.

- **Those who are remanded to custody should retain looked-after child status, in recognition of their additional vulnerabilities and complex needs.**

Chapter 2: We're not doing enough to help families

13. In Chapter Two we describe the important and underutilised role of the community in supporting families. What do you think is the role of the Children's Social Care system in strengthening communities rather than just providing services?

No comments on this question.

14. In Chapter Two we raise the feedback we have heard from families and others about the tension between providing support and protection. How do you think we should address the tension between protection and support in Children's Social Care that families describe? Is a system which undertakes both support for families and child protection impeded in its ability to do both well?

We do not believe there should be a tension between protection and support as any successful social care system will have the ability to do both well. Professionals working within a child rights framework (see question 10) would be trained and supported in balancing both by putting children's best interests first. In addition, the impact of austerity and cuts to early intervention services on families only being reached at crisis point cannot be ignored (see question 11). These policies need to be addressed alongside reforming children's social care – the social care system does not exist in isolation.

- **Local authorities should receive funding and increased capacity to enable them to provide a range of support services to families to both support *and* protect them – including parenting classes, respite care, therapy/counselling, and residential settings for whole families.**

This is key to maintaining children's long-term relationships with their families and support networks and to give families a chance to stay together which is usually better for the child and for the state in the long term.

¹⁸ Department for Education, Home Office, Ministry of Justice (2018) *The national protocol on reducing unnecessary criminalisation of looked-after children and care leavers*
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/765082/The_national_protocol_on_reducing_unnecessary_criminalisation_of_looked-after_children_and_care_.pdf

Young people who are care-experienced have reported facing a stigma associated with having been in care.¹⁹ We frequently work with care-experienced parents who have seen the children's social care system get involved with their children almost as a matter of course in situations where it would not have if the parent was not care-experienced. It is crucial that in matters of child protection the same thresholds are applied to all parents, regardless of care experience. Young parents with care experience themselves should receive additional support as needed when in difficulty with their parenting and their own personal childhood history should be considered in a fair and objective way in any assessment of their parenting capability. Decisions on whether it is in a child's best interests to remain with their family should be considered solely on the individual circumstances of that family without any underlying assumptions.

However, despite the need for the system to support families to enable children to remain with them as much as possible, it is also crucial to recognise that unfortunately there will be circumstances where it is in the child's best interests to be removed from their family. It cannot be assumed that growing up with their family is always the best for the child – it is key to have a flexible approach which is tailored to each child and their family. In some cases, entering care can be the best outcome for that child.

15. In Chapter Two we describe the need for a clear definition and understanding of what we mean by family help. We will consult with families and others in the next stage of the review about what this should be. To start the conversation we have provided an initial definition of family help on page 36. What do you think about our proposed definition of family help? What would you include or exclude in your definition?

No comments on this question.

16. We want to know whether we have missed or misunderstood any significant issues or evidence. With that in mind do you have any other comments about the contents of this chapter, including our interpretation of evidence?

No comments on this question.

Chapter 3: We need a child protection system that keeps children safe through more effective support and decisive action

18. In Chapter Three we talk about the importance of high quality decision making to keep children safe. How do you think we can raise the quality of decision making in child protection?

Advancing and respecting children's rights is a critical element in improving the quality of decision making in child protection. This means decision making must centre children's wishes and feelings and see children as a whole in line with article 12 of the CRC. Children's views should always be sought out and given due consideration (*see question 10*).

To do so properly involves recognising the trauma and abuse many CYP will have encountered.²⁰ Professionals and carers must be trained in trauma-informed practice. Young people have told us that

¹⁹ Bright Spots (2020) *Challenging stigma in the care system* <https://coramvoice.org.uk/wp-content/uploads/2020/03/Bright-Spots-Insight-Paper-Stigma-web.pdf>

²⁰ NYAS (2019) *Looked after minds: Prioritising the Mental Health of Care-Experienced Children and Young People* <https://www.nyas.net/wp-content/uploads/NYAS-looked-after-mind-report.pdf>

professionals and carers should also be trained in identifying and addressing the mental health issues faced by CYP they care for.

We have also heard from young people that it is key that professionals understand the impact of different cultural and racial backgrounds when tailoring support for CYP. One Black young person we spoke with talked about being placed in a white area and facing near-daily racism. He felt strongly that a young person's race should be part of risk assessments and inform decision-making: *"I ran away so many times... Especially putting me in a racist area – those are things you should check – someone's culture – before you place them anywhere, because that is a big safety risk. I was injured"*.

19. In Chapter Three we talk about the professionals and parents trying to safeguard teenagers facing harm outside of the home, are being failed by a system that was not designed for the task and where there is not clear accountability for teenagers safety outside the home. How do you think we can fill the accountability gap in order to take effective action to keep teenagers safe?

We agree that the system is not working for older teenagers. Children are now entering the care system older and with more complex needs (see question 11). This is due to both external risks and breakdowns in relationships within the family but the system's current response does not adequately support and safeguard the child in these situations.

Many of these issues are related to the adultification of older teenagers – which disproportionately affects Black children.²¹ Under the CRC, 16- and 17-year-olds are still children who still need care in their everyday life. This is not in conflict with the concept of a progressive transition to adulthood and independence – a child rights approach takes into account the child's development and adapts to their individual needs while still protecting their rights and welfare.²² Treating children like adults puts them at risk and denies them the additional protection and support they still need.

- **Professionals should be trained on contextual safeguarding and this must be put into place in practice.**

Below are some key areas where we see older teenagers not being kept safe.

Child criminal exploitation

The failures in the system for older children are particularly illustrated by the state's response to children who are being criminally exploited. In 2019, 4,550 children were referred into the National Referral Mechanism (NRM) – an increase of 45%. Nearly half (42.8%) concerned children from the UK.²³ **Child criminal exploitation (CCE) is the most commonly reported type of exploitation, with children in poverty, children with learning difficulties, children excluded from school, and looked-after children being at a particularly heightened risk from county lines exploitation.²⁴ While there has been increasing attention on this issue, and although there is a statutory defence, children who are criminally exploited continue to be seen as offenders rather than victims, which contributes to an**

²¹ Davis, J. and Marsh, N. (2020) *Boys to men: the cost of 'adultification' in safeguarding responses to Black boys* Critical and Radical Social Work <https://www.ingentaconnect.com/content/tpp/crsw/2020/00000008/00000002/art00009>; Davis, J. (20 November 2019) 'Where are the Black girls in our CSA services, studies and statistics?' <https://www.communitycare.co.uk/2019/11/20/where-are-the-black-girls-in-our-services-studies-and-statistics-on-csa/>

²² For more information on the implementation of children's rights during adolescence, see: UN Committee on the Rights of the Child (2016) *General comment No. 20 on the implementation of the rights of the child during adolescence* https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f20&Lang=en

²³ Home Office (2020) *National Referral Mechanism statistics UK: End of year summary 2019: data tables second edition* <https://www.gov.uk/government/statistics/national-referral-mechanism-statistics-uk-end-of-year-summary-2019>

²⁴ Her Majesty's Inspectorate of Constabulary and Fire and Rescue Services, HM Inspectorate of Probation, Care Quality Commission, Ofsted (2018) *Protecting children from criminal exploitation, human trafficking and modern slavery: an addendum* https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/756031/Protecting_children_from_criminal_exploitation_human_trafficking_modern_slavery_addendum_141118.pdf

inconsistent safeguarding response.²⁵ Despite Government efforts to make the NRM more “child friendly”,²⁶ the UK’s Anti-Slavery Commissioner has raised concerns that it is disconnected from local child protection processes and called for radical reform.²⁷

Despite legislation in 2015, the Independent Child Trafficking Guardians (ICTG) scheme pilot is only operating in a third of local authority areas in England and Wales and will be expanded to cover two thirds of local authorities, with no timeline for full implementation.²⁸ We know through our advocacy and legal casework that those who are found to be victims of CCE/modern slavery continue to lack adequate support from statutory services.

- **There should be better multi-agency coordination between housing, mental health and community services to ensure that both identified victims and those at risk of CCE/modern slavery are supported to access specialist support and services (see question 29).**

Additionally, there are no formal protections from school exclusion for victims of CCE/modern slavery, with the law not taking a positive NRM decision into consideration despite the fact that many children excluded from school are victims of CCE.²⁹ There is also very little understanding of CCE amongst school decision-makers. Victims are more vulnerable to further or new exploitation when out of mainstream education.³⁰

- **The forthcoming revised statutory guidance on school exclusions should contain stronger protections for children who are victims of CCE to ensure they are not excluded from school and teachers have a better understanding of the warning signs of CCE.**

Homeless 16- and 17-year-olds

Another key example of this is local authorities’ response to homeless 16- and 17-year-olds. **Most homeless 16- and 17-year-olds who approach their local authority for support should be accommodated by their children’s services team under section 20 of the Children Act**, under which local authorities have a duty to accommodate children who cannot live with their families. Although housing services also hold a duty to homeless 16- and 17-year-olds (as under Part VII of the Housing Act they have ‘priority need’), under the well-known Southwark judgment of 2009³¹ local authorities’ duties under the Children Act take precedence over their duties under the Housing Act. In some rare cases and as a last resort, local authorities may use section 17 of the Children Act to accommodate homeless 16- and 17-year-olds, though this provision is more often used to house families rather than children on their own. This is reiterated in joint statutory guidance.³²

²⁵ Ibid

²⁶ Home Office and Rudd, A. (17 October 2017) ‘Modern Slavery Taskforce agrees new measures to support victims’ <https://www.gov.uk/government/news/modern-slavery-taskforce-agrees-new-measures-to-support-victims>; Home Office and Newton, S. (26 October 2017) ‘Modern slavery victims to receive longer period of support’ <https://www.gov.uk/government/news/modern-slavery-victims-to-receive-longer-period-of-support>

²⁷ Independent Anti-Slavery Commissioner (2020) *Independent Anti-Slavery Commissioner Annual Report 2019-2020* https://www.antislaverycommissioner.co.uk/media/1461/ccs207_ccs0520602790-001_iasc_annual-report-2019-2020_e-laying.pdf

²⁸ ECPAT UK (9 March 2021) ‘Guardianship expanded to more pilot sites, but still not available nationwide’ <https://www.ecpat.org.uk/news/guardianship-expanded-but-still-not-nationwide>

²⁹ Temple, A. (2020) *Excluded, exploited, forgotten: Childhood criminal exploitation and school exclusions* Just for Kids Law https://justforkidslaw.org/sites/default/files/fields/download/JfKL%20school%20exclusion%20and%20CCE_2.pdf

³⁰ NCA Intelligence assessment (2018) *County lines drug supply, vulnerability and harm* <https://www.nationalcrimeagency.gov.uk/who-we-are/publications/257-county-lines-drug-supply-vulnerability-and-harm-2018/file> See paragraph 30.

³¹ *R (G) v Southwark* [2009] UKHL 26

³² Ministry of Housing, Communities and Local Government and Department for Education (2010, updated 2018) *Prevention of homelessness and provision of accommodation for 16 and 17 year old young people who may be homeless and/or require accommodation* https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/712467/Provision_of_accommodation_for_16_and_17_year_olds_who_may_be_homeless.pdf

Although the statutory guidance states that children's services and housing services should work together, especially to do the child in need assessment, in practice this is not often the case. Many statutory services are not working together to prevent and address homelessness in this group of children – instead they are bounced back and forth between children's services and housing services and having to repeat their stories with neither service willing to take responsibility for providing them with support (see question 29).

Being accommodated under section 20 means that the child becomes a looked-after child after 24 hours and is then entitled to a social worker and ongoing support from their local authority. A child in care will become a care leaver upon turning 18 and will be eligible for pathway planning and ongoing support up to age 25. They will also have priority need under homelessness legislation, which means they will be more likely to be supported into long-term housing by their local authority should they become homeless after they turn 18 (see question 27). **Children who are accommodated under the Housing Act or under section 17 of the Children Act are entitled to much less support – in particular, a child accommodated under the Housing Act is not legally entitled to a social worker or any form of support from the local authority. They also do not have any entitlements once they turn 18, including not having priority need. Without this support, often these children become homeless again once they turn 18.**³³

Based on the replies to FOI requests we made in 2020, we estimate that in 2018-19 **more than 2,500 16- and 17-year-olds were housed by their local authority without legally being in care.**³⁴ It is important to recognise that this figure obviously does not include children who are gatekept – sent away without being accommodated – which JfKL's experience suggests is likely to be a significant number of children.

There is an exception in the statutory guidance which allows local authorities to house 16- and 17-year-old under the Housing Act or under section 17 of the Children Act instead of as a looked-after child, but this must be what the child decides after being fully informed of their options and their consequences. **Unfortunately, with austerity and children's services being under severe financial pressures (see question 11), in our experience many of these children are being nudged towards being accommodated under the Housing Act or section 17 of the Children Act as it is a lower-cost option for local authorities.** Under the joint guidance, children in this situation should have access to independent advocacy to help them make a fully informed decision, but there is no clear duty on the local authority to actively support this and access to youth advocacy overall is patchy (see question 10).

Case study: A 17-year-old who did not receive the support she was entitled to despite making her wishes clear

Jessica approached JfKL for support when she was 17. The relationship with her parents had broken down because they were physically and verbally abusive towards her. When she found herself locked out of her friend's home where she had been sofa-surfing, she contacted the out of hours service stating she was street homeless and was told to wait for a call back which never happened. As a result, Jessica ended up staying in a police station until the early hours of the next morning.

The following night, JfKL obtained emergency funding to place Jessica in accommodation for one night. She approached children's services with the support of an advocate and was informed that the local authority would go through its usual process and could not provide accommodation for her pending its assessment.

³³ More case studies are available in: Just for Kids Law (2020) *Not in Care, Not Counted* <https://justforkidslaw.org/sites/default/files/fields/download/Just%20for%20Kids%20Law%20-%20Not%20in%20care%2C%20not%20counted%20-%20June%202020.pdf>

³⁴ Full details can be found in: Just for Kids Law (2020) *Not in Care, Not Counted*

Following pre-action correspondence, the local authority provided Jessica with interim accommodation, pending an assessment of her needs. No clarity was provided as to whether this was under section 20 of the Children Act or another provision, nor what she was to do once the temporary accommodation expired, despite the fact the local authority was aware that she would be street homeless. No indication was made that during this time the local authority was assessing her needs, contrary to the statutory guidance. However, Jessica had made her wishes and feelings clear and expressed she wanted to be accommodated under section 20. Following further pre-action correspondence, the local authority finally agreed to accommodate her under section 20 as a looked-after child.

In 78% of these cases taken on by our legal team, local authorities quickly conceded and changed their position. Most of the time they conceded following only a pre-action letter from our legal team.³⁵ Such a high success rate illustrates that many of these decisions do not have a basis in law but instead arise from gatekeeping practices. **Youth homelessness at this age is often the result of a breakdown in family relationship³⁶ and there is often little difference in the child's circumstances. In our experience, whether children will receive the support they are entitled to is often the result of a postcode lottery.**

Our full recommendations on this issue can be found in our submission to the Education Select Committee's inquiry on children's homes.³⁷ In particular:

- **The Government should amend the statutory guidance to clarify that as a default position, all homeless children should be housed under section 20 of the Children Act unless they have explicitly said they do not want to be after being made fully aware of their rights and entitlements.**
- **Homeless 16- and 17-year-olds should always have access to an independent advocate to support them to make decisions about the type of support they receive from the local authority.**
- **The Government should additionally consider creating a new status of 'vulnerable 16- or 17-year-old' for those children who refuse to become accommodated under section 20, in order to allow greater flexibility of responses, but ensure the same level of entitlements and support as 'looked after' status. 'Vulnerable 16- or 17-year-olds' should have a pathway plan drawn up and receive care leavers' entitlements after 18. They should also be able to change their minds and decide to become looked-after at any point.**

Additionally, one in five children living in currently unregulated settings are not looked-after children but have instead been placed there under the Housing Act or section 17 of the Children Act. This means that the reforms to unregulated settings being brought forward by the Government will not benefit 20% of the children living there (*see question 26*).

20. In Chapter Three, we set out that we think there is scope to increase the number of children in kinship arrangements and get the benefits that come from a stronger sense of identity and lifelong loving connections. What can we do to support and grow kinship care?

Although kinship care can be the right placement for a child, it should not be seen as the answer to an underfunded social care system. Not enough support is given to kinship carers and to the children who are in kinship care and most of the time young people who were in kinship care as a child do not have

³⁵ Ibid

³⁶ Pona, I., and Crellin, R. (2015) *Getting the house in order: Keeping homeless older teenagers safe* The Children's Society

³⁷ Just for Kids Law/CRAE (2021) *Just for Kids Law submission to the Education Select Committee's inquiry on children's homes: 16- and 17-year-olds who are placed in unregulated accommodation without being placed in care* <http://www.crae.org.uk/media/130976/Just-for-Kids-Law-CRAE-submission-to-childrens-homes-inquiry-April-2021-FINAL-with-logos.pdf>

care leavers' entitlements, leaving them at a disadvantage in the future. The oversight and support offered to both the kinship carer and the child should be close to or on par with other types of care, both before and after the child turns 18. Kinship care should only be used if it accords with their wishes and feelings and will meet the child's best interests. It should not become a 'go-to option' for local authorities because it is cheaper.

Without pathway planning and guaranteed ongoing support past 18, young people who were in kinship care are more vulnerable to homelessness. One of the young people we spoke to agreed and did not think it was right to present kinship care as the perfect answer: *"I was an asylum seeker, and I was put into kinship care with a relative and my carer and I were not entitled to formal support from the local authority. The social worker only visited once or twice and after that there was no contact for the rest of my life. When I turned 18 and was kicked out by my relative there was no plan in place for me."* After she turned 18, the relationship with her carer broke down and she was kicked out: *"I wasn't entitled to any support from the local authority or seen as a priority with housing services. I slept on the street the first night and then moved in with a friend but it was too far from my college and I had to drop out. (...) Although by law they had to have a housing plan in place by 30-days, this took three months during which I was sofa-surfing, and [the plan] was very restrictive. My only option was to find a place on my own with the limited budget available of £350 p/m – and that is nothing in London. (...) A lot of private landlords do not accept housing benefits. And the council would take so long paying out the deposit, and this would mean that I would lose the property and I needed to find another property again. I got clinically depressed during that period but that had no impact on the support I was entitled to. (...) If I'm making an effort to help myself, it is very frustrating to keep hitting brick walls."*

21. In Chapter Three we set out the good evidence for intensive support for families on the edge of care and post removal. Given the clear evidence of positive outcomes and value for money of programmes that support parents at the edge of care and post removal why aren't they more widely available and what will it take to make this the case?

No comments on this question.

22. We want to know whether we have missed or misunderstood any significant issues or evidence. With that in mind do you have any other comments about the contents of this chapter, including our interpretation of evidence?

No comments on this question.

Chapter 4: Care must build rather than break relationships

24. In Chapter Four we set out that whilst there have been attempts to improve specific parts of the care system for children, we have failed to create a system that works for children and prioritises and creates loving relationships. As well as asking specific questions about the care system, we want to ask: if we were creating care today that was good enough for all our children what would it look like?

The children's social care system must be built around CYP's rights and voices (see question 10). The young people we spoke with highlighted that through most of their experiences of children's social care and leaving care they have experienced a lack of respect for their personal dignity. One young person recounted her experience of moving at very short notice and only having bin bags to pack up her belongings: *"Often your belongings are just put in bin-bags, and then because it was all arranged last minute you don't have keys to your new place and there is no one there so they just unload your bin bags in*

front of the house and this can be very embarrassing. And it makes you feel unloved – you're on your own, you've lost your family, the people who've been with for years, your foster siblings and you're just thrown outside and having to find your own way."

We know from our direct practice with CYP that too often they are faced with cliff edges at transition points during their involvement with the care system: at 18 when they leave care, at 21 when they only continue to receive leaving care services if they express that they want to and at 25 when they stop being a care leaver.

Pathway planning and postcode lottery

In our experience, pathway planning is always not done properly and in consultation with the child. Too often it happens at the last minute and is seen as a tick-box exercise instead of being developed over a period of time to help the child transition into young adulthood. One young person we spoke to said many children are not told in advance what the plans are for when they will turn 18: *"Pathway plans need to be done well ahead, not a week or a month before you have to move out. They are approached like a tick-box exercise, because they're supposed to be binding, social workers do not put anything concrete in the plan that they'd need to commit to. When you come out of the pathway planning meeting, you still have no idea what's going to happen."*

- **Stronger checks should be put in place to ensure the pathway planning process is done properly and far enough in advance (at least 6 months early) that the child has time to prepare and plan for the changes to come.**

We have already raised the lack of post-18 support for young people in kinship care (*see question 20*). Our staff have also raised that young people who were 'in need' or on child protection plans when they were children are not entitled to ongoing support after 18.

- **The Government should make step-down/transition support or planning for former children in need or young people who were on child protection plans a statutory requirement which would allow children to transition to adulthood more gradually.**

Once children turn 18, the support they receive as care leavers (the 'local offer') varies between local authorities as there is no clear national framework on the specific support they are entitled to. This postcode lottery is unfair – all young people who have left care should be entitled to the same level of support regardless of where they were in care when they were children. For example, the young people we spoke to highlighted that they had experienced no support with attending higher education: *"Social services do not prioritise education, even when young people are motivated. My experience was having to battle them at every stage. When I said I wanted to go to university, they said that they were not going to support me."* This was particularly acute for this young person as due to her immigration status she was not entitled to student finance and was not made aware of this: *"I didn't know what I was not eligible until last minute and they did not help me with this."*³⁸

They also thought that all looked-after children and care leavers should automatically be able to access mental health support, especially those from refugee backgrounds, and that it must be accessible early on rather than at crisis point. We see daily in our work the impact that not getting mental health support has on the young people we work with, leading to issues escalating into acute crisis with severe long-term consequences which is also well documented in research.³⁹ The young people also thought mental health should systematically be considered during the pathway planning process as the transition period

³⁸ For more information on young people with Limited Leave to Remain (LLR) not having access to student finance, see the Let Us Learn campaign from We Belong: <https://www.webelong.org.uk/what-we-do/we-build/let-us-learn>

³⁹ Young Minds (2 September 2019) 'Huge gaps in early support for young people with mental health problems'

is stressful and leaving care can be difficult to adjust to: *"Mental health should be part of the support young people receive; they shouldn't need to request this – they may not know that they have mental health needs. It should also be provided when you move out – one of the most traumatic experiences is moving homes and that links up with those abandonment issues – you need mental health support to transition though that."*

Both our staff and the young people we spoke to said that pathway planning and leaving care support must help the young person to gradually develop the practical skills and knowledge they will need as an independent adult, including discussions around financial planning and management (benefits, housing, bills, etc). Young people are often forced into independence too soon and too abruptly but do not get this support from their personal advisor and do not have a support network who could help them navigate the difficulties of becoming independent. The young people we spoke to highlighted that young people who move home must also receive help with the logistical side of moving – providing the young person with luggage and boxes, moving vans and drivers, access to handymen to set up furniture and help with home improvements, etc – and that ongoing support should be available to them for a transition period of at least one month after moving. This should not be optional as the leaving care allowance is not enough for a young person to pay for these services on top of furnishing their new home.

- **The Government should publish clearer guidance on what specific support should be included in all local offers. At a minimum this should include support to attend higher education, access to mental health support, teaching young people the practical skills and knowledge needed as an independent adult – including financial planning and budgeting – and providing them with hands-on assistance when moving and setting-up home.**
- **Mental health should systematically be considered during the pathway planning process.**

Local authorities withholding support past 21

Under new duties set in the Children and Social Work Act 2017, local authorities must continue to provide care leavers with a personal adviser and advice and support once they turn 21, if they request it. But in the context of funding cuts, we often see young care leavers unlawfully being denied this ongoing support at 21.

Case study: a 22-year-old care leaver being denied ongoing support

I have been working with a 22-year-old care leaver 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 is no guarantee the local authority can continue to offer her support and a personal advisor, despite her requesting it. She has been told that if she is no longer in education, the local authority will close her case then do a 'post-21' assessment and decide whether or not to reopen it, and they will reserve the right to keep her case closed if they believe it to be in her best interests.

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 personal advisor 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”. (Just for Kids Law Advocate)

The difficulty in accessing support post-21 can discourage young people from attending university as the leaving age is generally 21 and young people may feel that it would be too difficult to lose support at that stage in life, especially as care leavers aged 21 and over no longer have automatic ‘priority need’ if faced with homelessness (see question 27).

- **Local authorities should ensure that young people aged 21-25 are not denied their entitlement to a personal adviser regardless of whether they are in education or not and the Government should ensure local authorities are properly funded to fulfil this legislative requirement.**

Leaving care at 25

We do not believe that there should be a firm cut-off of support at the age of 25. Leaving care services must pivot to an approach more tailored to the needs of the young person. Under the corporate parenting principles in the Children and Social Work Act 2017, local authorities are meant to be acting in the manner a good parent would and parents do not cut off their children at any age. Care-experienced young people often have smaller support networks than young people without care experience and an inflexible leaving care age of 25 sets them up to fail, often leading to issues with housing and homelessness, exacerbated health and mental health issues, etc.

Similar to the pathway planning process before a child turns 18, young people should have a conversation with their personal advisors before turning 25 to determine together what, if any, further support they require. Our advocates are currently finding themselves being the bridge between leaving care services and adult social care because there is inadequate transition planning for care leavers to independence. There should be better collaboration between services to ensure care leavers’ needs are addressed (see question 29).

- **Care leavers should not see a firm cut off of support at the age of 25. The Government should fund local authorities to adopt a more flexible approach tailored to the needs of each young person, similar to the pathway planning process and explore developing legislation to ensure this happens.**

25. In Chapter Four we set out a variety of ways that care builds rather than breaks relationships. How do you think we care can help to build loving lifelong relationships as the norm for children in care?

No comments on this question.

26. In Chapter Four we set out the wide ranging problems that mean there are not enough homes, in the right places with the right support and particular problems with secure and residential care. What changes do you think we need to make to ensure this is the case? What role should residential and secure homes have in the future?

The most important consideration is for all CYP to be placed wherever is best for them. The residential sector’s issue with privatisation and the impact of this on the high cost of placements, the low quality of the care provided and the lack of appropriate placements in many areas of the country is now widely evidenced.⁴⁰ Similarly, the lack of available foster carers across the country able to cater for

⁴⁰ The Local Government Association (2021) *Profit making and Risk in Independent Children’s Social Care Placement Providers*
<https://www.revolution-consulting.org/wp-content/uploads/2021/05/Profit-Making-and-Risk-in-Independent-Childrens-Social-Care->

children of all backgrounds, which is partially due to the lack of support, including financial support, and the housing crisis and social security policy leading to households not having the spare room or resources to foster, is well established.⁴¹ This is leading to CYP being placed in children's homes or unregulated placements when fostering would be best for them, being placed in homes which are not able to support them properly, or having to be placed out-of-area, far away from any support network they may have.

Unregulated accommodation

Unregulated accommodation has in recent years been exposed as often inappropriate and unsafe for children. The CYP we work with have told our front-line practitioners about their experiences of being housed in dirty, unheated accommodation which are in a state of disrepair or lack basic fittings or furniture, or living in unsafe accommodation alongside adults where they are exposed to drinking, drug taking and sexual harassment. One young person told us he was put in an unregulated placement when he was in care and didn't receive any pocket money for clothes and toiletries. He was also exposed to drugs there and his local authority did not properly monitor his placement or do a proper risk assessment. Despite his running away several times, his placement was not looked into.

Our research estimated that in 2018/19 1,498 16- and 17-year-olds living in unregulated accommodation were not looked-after children (see question 19).⁴² This represents one in five of all children living in unregulated settings. The reforms planned by the Government – creating a set of minimum standards to regulate these placements – do not include this group of children in their scope as they only apply to 16- and 17-year-olds who are in care or are care leavers. As costs of running accommodation for 16- and 17-year-olds who are in care or care leavers increase as a result of the planned minimum standards, local authorities with limited resources may choose to place homeless 16- and 17-year-olds who are not in care, and to which they have the lesser duty, in cheaper and still unregulated accommodation – most likely accommodation catering to adults and, therefore, unsafe for children.

Even more importantly, we cannot envisage any circumstances where a child would not need to receive any form of care, as is currently being suggested by the draft minimum standards. All children should be cared for and all settings where 16- and 17-year-olds live should provide care to those children. Under the CRC, all children are entitled to special protection from the state at least until they turn 18. Children who do not have a familial support network need more, not less, care and support. This was echoed by one of the young people we spoke to who said that she felt that children were being forced to live independently much too soon and that all children need care.

- **The Government should ban the placement of all children (under 18) in unregulated accommodation where they will not receive care.**
- **Failing that, the Government should ensure that the planned minimum standards for independent and semi-independent (unregulated) provision extend to all children living in such settings, regardless of which piece of legislation they are being housed under, and not just to looked-after children.⁴³**

[Placement-Providers-FINAL-update-2-Spring-2021.pdf](#); Children England (2021) *Children England submission to the Competition and Markets Authority* <https://www.childrenengland.org.uk/Handlers/Download.ashx?IDMF=0843810f-f3ba-46ca-99e3-dfe7cdd05542>

⁴¹ See for example The Fostering Network (2021) *Independent Review of Children's Social Care: Call for Evidence*

<https://www.thefosteringnetwork.org.uk/sites/default/files/2021-04/Call%20for%20evidence%20submission%20-%20full%20version.pdf>

⁴² Just for Kids Law (2020) *Not in Care, Not Counted*

⁴³ Our full recommendations are available in: Just for Kids Law/CRAE (2021) *Just for Kids Law submission to the Education Select Committee's inquiry on children's homes: 16- and 17-year-olds who are placed in unregulated accommodation without being placed in care*. We are part of the Steering Group of the [Keep Caring to 18 campaign](#) and support its recommendations.

Child custodial estate

The child custodial estate is not fit for purpose and should be abolished. In December 2016, the Government committed to phasing out child prisons.⁴⁴ Little action has been taken to achieve this goal and there is still no clear plan, including timescales, for the closure of all juvenile Youth Offender Institutes (YOIs) and Secure Training Centres (STCs). While children remain in prison, their safety and welfare is at risk.

While the number of children deprived of their liberty has fallen sharply over the last 10 years, custody is not used as a last resort and for the shortest possible time, and BAME children now make up the majority (53%) of those imprisoned with Black children alone making up nearly one third (28.8%) of all those imprisoned.⁴⁵ There were 534 CYP (472 children) in custody in May 2021, with the majority held in YOIs (72.8%) and STCs (13.8%), with only 71 (13%) in welfare-based Secure Children Homes (SCHs), despite the Government recognising that these: 'come closest to delivering the principles of best practice in youth custody'.⁴⁶ The Government has recognised there is an issue with child prisons, but has not addressed the problem in the way it should.⁴⁷

- **The child custodial estate should be abolished but for the small numbers of children who need to be deprived of their liberty they must be held in small, welfare-based community settings.**

27. We want to know whether we have missed or misunderstood any significant issues or evidence. With that in mind do you have any other comments about the contents of this chapter, including our interpretation of evidence?

The Case for Change does not sufficiently examine issues of housing and homelessness faced by care-experienced young people. Homelessness has a massive impact on a person's life, both short and long-term,⁴⁸ and links between homelessness and the children's social care system must be analysed. **Care-experienced young people are over-represented in the homeless population: one third of care leavers experience homelessness in the first two years immediately after they leave care and a quarter of all homeless people have been in care at some point.**⁴⁹ Although this is well-known, statutory services are not collaborating to prevent and address this, leading to gaps in support and safeguarding risks going unaddressed (see question 29).

Lack of planning and cooperation between services

In theory, **the support care leavers are legally entitled to should mean that they would never be faced with homelessness.** However, in our experience good personal advisors are few and far between – **the context of resource scarcity (see question 11) means it is increasingly difficult for professionals to uphold their responsibilities to CYP, leading to chronic, but undeclared, gatekeeping from social workers and a resource-led, not CYP-led, approach.** Experiences of poor transition planning before young people turn 18 and of leaving care support being cut off at 21 are common and leave care leavers vulnerable to issues with their housing (see question 24). We hear frequently in our work of cases of

⁴⁴ Ministry of Justice (2016) *Government response to Charlie Taylor's Review of the youth justice system* https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/576554/youth-justice-review-government-response-print.pdf

⁴⁵ Ministry of Justice (May 2021) *Youth custody data: May 2021* <https://www.gov.uk/government/statistics/youth-custody-data>

⁴⁶ Ministry of Justice (September 2020) *A smarter approach to sentencing* <https://www.gov.uk/government/publications/a-smarter-approach-to-sentencing>

⁴⁷ Ibid

⁴⁸ Crisis (2018) *Everybody In: How to end homelessness in Great Britain* https://www.crisis.org.uk/media/239951/everybody_in_how_to_end_homelessness_in_great_britain_2018.pdf

⁴⁹ All-Party Parliamentary Group (APPG) for Ending Homelessness (2017) *Homelessness prevention for care leavers, prison leavers and survivors of domestic violence* https://www.crisis.org.uk/media/237534/appg_for_ending_homelessness_report_2017_pdf.pdf

personal advisors not accompanying young people to meetings with housing officers during the pathway planning process, resulting in young people being nudged towards the private rental sector instead of getting put on the social housing register without understanding the consequences of this choice. Personal advisors should be the young person's advocate but young people can find it hard to trust them when they are 'part of the system'. We have also heard from young people that they did not think there was enough housing available to care leavers which is tailored to their needs – they did not think an 18-year-old who has just left care should have to rent a room in private shared accommodation, as is often the case.

Services are often not working well together. **Although guidance on best practice to support care leavers in accessing safe and stable housing is available to local authorities,⁵⁹ these principles are unevenly applied with care leavers subjected to a postcode lottery on the quality of the services they encounter and often finding themselves bounced between councils and between housing and children's services within councils.** We see too often care leavers faced with homelessness being directed by their personal advisors to make a homelessness application with housing services instead of receiving the leaving care support they are entitled to.

Additionally, there is no framework for care leavers moving between local authorities to be moved onto their local leaving care services. For example, a care leaver who lives in social housing in their local authority of origin may not want to move and risk losing access to social housing. This can prove particularly difficult when a young person needs to move area due a safeguarding risk or wants to move to attend university or for work.

- **Local authorities should collaborate to ensure that care leavers do not lose the support they are entitled to after moving.**

Access to social housing

We commonly see in our direct work young people who were placed out-of-area when they were children but are not eligible for the leaving care support in their local authority of residence once they turn 18, even if they have lived there for several years and have their support networks in that area. In some cases, this means that they are not a priority for social housing even though 'local' care leavers would be.

Case study – a 21-year-old care leaver who cannot get social housing in the area he has been living in for 5 years

Matt is 21-year-old care leaver and a full-time student. Although his local authority of origin is Surrey, he has lived in Newham since he arrived in UK aged 16 as an unaccompanied asylum seeking child, first in foster care and then in shared supported accommodation. He has PTSD and depression from the violence he witnessed in Afghanistan and is currently on a 5-year leave to remain visa.

Matt became homeless in autumn 2020 during the Covid crisis and had to resort to sofa surfing while waiting for the outcome of his homelessness application. He became street homeless just before Christmas. Although he was in touch with his personal advisor about his situation, he was refused help. Eventually Newham council found that it owed Matt a main housing duty and gave him a bidding number for social housing. However, Matt does not have highest priority for social housing in Newham, despite being a care leaver who had lived in the borough for five years, and as he is on a low band for housing he will not be able to get social housing for many years.

⁵⁹ See: DfE and MHCLG (2020) *Joint housing protocols for care leavers: good practice advice* <https://www.gov.uk/government/publications/joint-housing-protocols-for-care-leavers/joint-housing-protocols-for-care-leavers-good-practice-advice>; St Basil's and Barnardo's (2019) *Care leavers accommodation and support framework* https://stbasils.org.uk/wp-content/uploads/2020/01/Finalframework2a_CareLeavers_A4.pdf

After reaching out to our services, his housing solicitor got in touch with Surrey council and he was finally placed in emergency accommodation in Walthamstow (paid for by Surrey council). Surrey council have now offered Matt a permanent place in their area but he has never lived there and does not wish to leave Newham. Newham council has so far refused to acknowledge owing any additional duty to Matt.

Local authorities have the power to determine the groups of people who will qualify for social housing in their area, taking into account groups set out in the Housing Act 1996 as needing to get 'reasonable preference' in local authorities' allocations schemes. This includes people who need to move on 'welfare' grounds, which Government statutory guidance on social housing allocations indicates encompass care leavers. But this does not translate to all care leavers having priority for social housing in all local authorities. Local authorities still have a lot of control over who gets the highest priority and complicated rules around local connections, the type of property care leavers are entitled to and the availability of social housing mean that often care leavers cannot access suitable social housing in their area of choice. The lack of available social housing across England very often means that someone who isn't in the highest priority band for social housing will never be able to access social housing. Even when on the highest band, it can take several months or even years before social housing is available.

As in Matt's case above, care leavers can currently sometimes be offered housing in their local authority of origin. This means uprooting their lives and leaving their support network behind at an age when they would normally be relying on friends and trusted adults to transition to adulthood. Losing this support network can result in detrimental consequences for young people, sometimes pushing them into homelessness, the criminal justice or mental health system which has both a long-term personal impact and high cost to society.

- **All care leavers should have access to social housing in a way that does not restrict their life choices, especially where they were placed out-of-area as a child.**
- **Care leavers should additionally be supported by their personal advisor to apply for social housing when that is the best option for them.**
- **To deliver this, local authorities should be funded to buy or build to meet the local need for social housing.**

Practical barriers in the homelessness system

Once care leavers do enter the homelessness system, they are faced with many practical barriers. Some young people may get turned away by being told prematurely that they do not have 'priority need' and wouldn't be eligible for any support, that as they are sofa-surfing they are not homeless, or they may get discouraged by the communicated delays in the process and not bother to go to the initial assessment. Over a quarter of the young people who approached their housing services as homeless in 2019/20 did not go on to receive the initial assessment they are entitled to.⁵¹ It may also be that care leavers who are faced with homelessness but have had previous negative experiences of statutory services are less likely to reach out for help and instead rely on sofa-surfing, hiding the true scale of the problem.

Once they have completed a homelessness application and gone through an initial assessment, care leavers face additional hurdles. Our experience shows that even when a young person has completed a homelessness application, some councils do not systematically assess whether they are eligible for interim accommodation while their application is being processed. Young people should be provided with interim accommodation if they 'may' have priority need (see below) – without it they are left

⁵¹ Centrepoint (2020) *Beyond the numbers: The scale of youth homelessness in the UK* <https://centrepoint.org.uk/media/4598/databank-report-2020.pdf>

homeless while their application is being processed. Even where the young person is provided with interim accommodation, the only option offered is not always appropriate or safe. However, refusing the offer would mean risking a decision of intentional homelessness (see below).

Priority need

One of the key tests of homelessness support is whether the applicant has 'priority need'. A homeless applicant must have priority need in order for the local authority to owe them a 'main housing duty' (supported into long-term housing). The law sets out the different priority need categories. **Care leavers aged 18 to 20 automatically have priority need. However, once a care leaver turns 21, they no longer automatically have priority need. Instead, housing services need to establish whether they are vulnerable "as a result of having been looked after, accommodated or fostered"**. To prove vulnerability, the young person must show they "would be significantly more vulnerable than an ordinary person would be if they became homeless".

We see in our work that local authorities often ask for specific expert evidence of this vulnerability, which can be hard for a care leaver to gather without the help from a housing professional or lawyer. Unless they come fully aware of their rights and armed with all evidence necessary, care leavers may be told by housing services that they are not vulnerable and do not have priority need. At this stage, it is unlikely many would know that they can question that decision and how to do so without getting professional help. **Given the new duties in the Children and Social Work Act 2017 extending support to care leavers up to age 25, it is difficult to understand the need for a cut-off age of 21 in relation to priority need.**

Priority need has been altogether abolished in Scotland since 2012⁵² and the Welsh Government is now also considering reforming priority need after having commissioned a review of priority need in Wales in 2019-20.⁵³ In England, the priority need test has recently been extended to survivors of domestic abuse to remove the burden on victims of having to prove they meet the vulnerability need.⁵⁴ **The vast majority of care leavers aged 21 and over who are faced with homelessness will meet the vulnerability test but still have to navigate this additional hurdle at the same time as they are being threatened with homelessness, negotiating with friends to be allowed to sleep on their sofas or sleeping in the streets. They should not be made to prove their vulnerability by taking part in invasive psychiatric assessments, paying their GP for a letter laying out their health issues or recounting their past traumas multiple times to council services.**

- **Priority need should apply automatically to all care leavers, up to the age of 25.**

We also very often see young people who approached their local authority for support when they became homeless as a child but were not provided with support from children's services under s20 of the Children Act, and were instead accommodated by housing services (*see question 19*).⁵⁵ Those young people do not then automatically have priority need if they are faced with homelessness, as they would if they were a care leaver under the age of 21.

- **As part of the homelessness application process, housing services should additionally check whether a homeless young person should have been put in care as a child and so should now have priority need.**

⁵² The [Homelessness \(Abolition of Priority Need Test\) \(Scotland\) Order 2012](#)

⁵³ Final and summary reports can be found [here](#)

⁵⁴ The Domestic Abuse Act amends s189 of the Housing Act to include "a person who is homeless as a result of that person being a victim of domestic abuse" as having priority need.

⁵⁵ Just for Kids Law (2020) *Not in Care Not Counted*

Intentionality

Another barrier faced by homeless care leavers is a young person can be found to be intentionally homeless if they leave accommodation that the council deemed suitable, even if the young person was unhappy with or felt unsafe in the accommodation, or if they fall behind on rent and get evicted. **Care leavers may be more likely to be found intentionally homeless**, as they often have no support system in place to help them avoid rent arrears for example. **In our experience care leavers also often have multiple vulnerabilities and may need accommodation which is tailored to their specific circumstances, but often do not get a choice of accommodation options and can be offered a placement that exacerbates their mental health issues or puts their safety at risk.**

Although the homelessness code of guidance states that housing services should avoid intentionality decisions for care leavers aged 18-25, there is no clear duty on local authorities to do this and the APPG on Ending Homelessness published a report in 2017 in which they raised concerns that intentionality was being used as a way of gatekeeping care leavers.⁵⁶ **It is common practice in our organisation for our advocates and solicitors to advise their clients not to refuse a placement and not to leave a placement, unless there are severe safeguarding concerns, as they would be putting themselves at risk of being found intentionally homeless and not being able to access any more support.**

Someone who is deemed intentionally homeless – if the council asserts that they caused or could have prevented becoming homeless – will not be owed a main housing duty by the local authority and will not be supported into long-term accommodation, even if they have priority need otherwise. In 2019, the Welsh Government brought into force the end of intentional homelessness for young people under 21 and care leavers aged 21 to 24.⁵⁷ But currently in England, no one is exempt from being found intentionally homeless. Some action has been taken at the local level with for example Barnsley council and Greater Manchester Combined Authority deciding not to apply the intentionality criteria to their care leavers.⁵⁸ **But care leavers should not be subjected to a postcode lottery on intentionality, which is another major barrier to accessing support from housing services.**

One young person we spoke to related her experience of being denied further support after refusing to move to a borough where she did not feel safe: *"I was told that I had to move from one borough to another, and I had a week to move-out and I was mid-college. I refused to move there because of previous traumatic experiences and ended up being homeless. Although I found my own accommodation, they refused to help me – they refused to give me the leaving care grant, no housing benefits, nothing. If moving to that other borough really was the only option they should have provided me with mental health support but they refused that as well."*

- **The intentionality criteria should be removed for all care leavers up to the age of 25.**

Lack of suitable move-on accommodation

Finally, even if a care leaver has successfully navigated the homelessness system and the local authority has accepted that they have a main duty to house them, they still risk being left in temporary accommodation for long periods of time as they struggle to move on to either social housing or the private rented sector.

⁵⁶ APPG for Ending Homelessness (2017) *Homelessness prevention for care leavers, prison leavers and survivors of domestic violence*

⁵⁷ [Housing \(Wales\) Act 2014 \(Commencement No. 10\) Order 2019](#) brought [s75\(3\) of the Housing \(Wales\) Act 2014](#) into force

⁵⁸ DfE (2018) *National Implementation Adviser for Care Leavers' First Year Report*

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/916016/National_Implementation_Adviser_for_Care_Leavers_Annual_Report.pdf; DfE (2020) *National Implementation Adviser for Care Leavers' second report: the decade of the care leaver*

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/933496/National_Implementation_Adviser_for_Care_Leavers_second_report.pdf

Benefits are currently not sufficient to cover the cost of private rents in many if not all local authorities, and even more so for care leavers who, as under 25s, are entitled to a lower rate of benefits. Care leavers who are left in temporary accommodation long-term are not able to improve their financial position through work because of the impact of earnings on benefits. Even where the local authority has offered to cover the cost of rent, the budget they give is too often out of step with the actual costs of renting in their area (*see case study in question 20*).

As we raised earlier on, there is very limited access to social housing even for care leavers. Many local authorities' social housing supply is limited and care leavers are subjected to a postcode lottery in terms of their access to social housing.

- **Further reforms and investments are needed to address these structural issues to support the increase in social housing supply and bring benefits and wages in line with actual living costs (*see question 11*).**

Chapter 5: System factors

29. In Chapter Five we describe the challenges that mean that multi-agency arrangements don't take a multi-disciplinary approach to working with children and families. How do you think we can strengthen multi-agency join up both locally and nationally, without losing accountability?

Using a child rights framework in the children's social care system includes taking a holistic approach towards CYP and their needs with services working together to meet these needs. The lack of multi-agency cooperation is currently leading to CYP being bounced between services and not actually getting the support they need. CYP have to keep repeating their history and trauma to a range of professionals without actually receiving support (*see questions 19, 24 and 27*).

- **A culture of collaboration and cross-working should be put in place across local authorities' services, including through a wider take-up of joint working protocols and a more holistic approach to CYP's needs with the CRC at its foundation.**

The use of MASH (multi agency safeguarding hubs) in certain local authorities for example has seen good results in keeping children safe.⁵⁹ This type of arrangement improves CYP's outcomes by ensuring that patterns and underlying causes can be identified and addressed in an integrated way. Many CYP find it easier to navigate the system when only dealing with one key support worker instead of a range of services. Unfortunately, social workers and personal advisors are not currently fulfilling this role, as they often lack the training, knowledge and capacity and there is frequent turnover of staff. In particular for older children faced with homelessness (*see question 19*), we have heard that the local authorities which have set up integrated youth homelessness hubs where children's services and housing services collaborate are seeing good results.⁶⁰

- **Local authorities should set up integrated youth homelessness services with each CYP dealing with only one key support worker.**

⁵⁹ Ofsted (2011) *Good practice by Local Safeguarding Children Boards*

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/419150/Good_practice_by_Local_Safeguarding_Children_Boards.pdf; Ofsted, the Care Quality Commission, HM Inspectorate of Constabulary and Fire & Rescue Services and HM Inspectorate of Probation (2018) *Protecting children from criminal exploitation, human trafficking and modern slavery: an addendum* https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/756031/Protecting_children_from_criminal_exploitation_human_trafficking_modern_slavery_addendum_141118.pdf

⁶⁰ See for example in Bristol <https://www.1625ip.co.uk/what-we-do/accommodation/>, Islington

https://islingtonchildcare.proceduresonline.com/pdfs/hl_1617.pdf and Greenwich

https://www.royalgreenwich.gov.uk/info/200186/housing_support/557/housing_support_for_young_people

The lack of cooperation also has an impact on CYP who are victims of child criminal exploitation (CCE). There is a need for co-ordinated action planning as an important way of reducing the risk to victims/potential victims and safeguarding them effectively (*see question 19*).

- **A similar framework to the Multi-Agency Risk Assessment Conference (MARAC) that exists for the highest risk of domestic abuse cases should be replicated for identified victims and those at risk of CCE/modern slavery. In a similar format as MARAC, this would be attended by representatives of local police, health, children social care, housing practitioners, education, care placement, youth offending team, ICTG, CSE practitioner, integrated gangs team (IGT) where relevant.**

30. In Chapter Five we set out the complexity, bureaucracy and risk aversion in the system that means that a significant proportion of social workers time is still spent on activity that is away from frontline practice. How do you think we can free up social workers to spend more time in direct practice with children and families and reduce risk aversion?

No comments on this question.

31. In Chapter Five we also talk about the role of inspection in influencing social work practice. How can monitoring and inspection make the most difference to children's and families' experiences and engender greater freedom and responsibility in the workforce?

As we set out in question 10, putting children's rights at the heart of the system is key to improving the quality of children's social care services and CYP's outcomes. However, for this to be effective, it needs to be monitored and inspected successfully. Therefore, ensuring a local authority has embedded a children's rights approach should be added as a quality indicator in Ofsted inspection frameworks. This would have a positive impact on children's experiences whilst allowing for a flexibility of responses for the workforce to meet the CYP's actual needs.

32. We want to know whether we have missed or misunderstood any significant issues or evidence. With that in mind do you have any other comments about the contents of this chapter, including our interpretation of evidence?

No comments on this question.

33. In Chapter Five we talk about how progress improving the system has been slow despite previous reviews and strategies. What will need to be different about this review's recommendations compared to previous reviews so that they create a tipping point for improvement?

We agree with the Care Review that the reforms suggested must be ambitious and system-wide. Additionally, children's rights should be put at the core of children's social care as this is key to improving the quality of services and CYP's outcomes (*see question 10*). The legislation surrounding children's social care has become scattered in many texts and duties have accumulated on local authorities' services without funding being allocated to be able to fulfil these duties. Local authorities are being asked to do more and more with less funding, leading to constant gatekeeping of support and an approach which focuses on cutting costs rather than meeting CYP's needs, for example not giving access to personal advisers and responses to homeless 16- and 17-year-olds as mentioned above.

This is not an issue stemming from the professionals working in the children's social care sector not caring but rather a culture which travels down the whole local authority and originates from a lack of resources. We receive regular referrals from social workers who refer cases to us anonymously, effectively whistle-blowing on their local authorities' inappropriate practice as they are too scared/feel

they cannot challenge their managers. The system cannot function without addressing the question of adequate funding to enable the ambition, regardless of how broad the reforms. Reforms also should not be taken in isolation – the children's social care system intersects with housing and homelessness, youth justice, education, health (including mental health), social welfare which all also require investment and additional funding.

- **The reforms suggested by the Care Review should be accompanied by specific funding for existing duties or any new ones.**

There should be stronger accountability for local authorities to deliver on their duties to CYP but they cannot be held to account if they do not have the resources to properly fulfil their duties. There must be better monitoring of local authorities' services' implementation of their duties, an effective system of sanctions for local authorities who do not meet them, education of CYP on their rights and entitlements and universal access to independent advocacy services.

General Feedback

34. Is there anything else you'd like to tell us?

We would like to share a few final quotes from the discussions we have had with care-experienced young people:

"Social services on the whole need to change whatever they're doing – whatever they were doing before they need to throw in the bin and start again."

"Another point I had was not really taking children's wishes into account properly. I feel like it's often the social workers and [carers] that are always listened to and for some reason the children themselves are always ignored in the situation. (...) I think it's wrong to just assume out of thin air when you could actually be causing more harm, which happens quite a lot."

"I think part of the issue with people being very closed-off is the fact that nobody talks about it, it's seen as something quite embarrassing almost? If there was a way to normalise it you know, as well as being in the system you're just a normal kid. It's not something that's abnormal about you. It might make kids a bit more comfortable being in the system anyway. Because it should feel like a regular family."

"Most of the time where you're in care there is no discipline. (...) most times it's just filling in tick boxes rather than actually caring for that young person. (...) I feel like everyone benefits from certain levels of discipline but without it it shows you you're not with your parents (...) when you are in care you see that your carer is disciplining their children and you're literally just left to your own devices. What's the point of being in care and living with an adult if you're left to live yourself like an adult already because no one cares."

"If I'm making an effort to help myself, it is very frustrating to keep hitting brick walls."