

Briefing – House of Lords, Oral question for short debate:

‘Report by the Children's Commissioner 'Unregulated: Children in care living in semi-independent accommodation', 17th November 2020

‘16- and 17-year-olds in unregulated accommodation’

Key messages

- The vast majority of 16- and 17-year-olds who are homeless or at risk of homelessness and approach local authorities for support should receive housing support as a looked-after child under Section 20 of the Children Act.
- Our FOIs found that 1 in 5 of all children housed in unregulated accommodation was not made a looked-after child by the local authority they approached.¹
- Not being housed under Section 20 has long-lasting impact on these young people – they do not receive support from a social worker and miss out on the care leavers entitlements they would receive until 25.
- These children are being left behind as the Government’s current consultation on unregulated accommodation² and the Children’s Commissioner report³ do not include them in their scope.
- The Government’s current consultation proposes a ban on under 16s in unregulated accommodation. We support the call for extending this to all under 18s, as detailed in the briefing Article 39 will be circulating for this debate.

Children in unregulated accommodation who are not in care

- New research from Just for Kids Law based on FOIs estimates that in 2018-2019, local authorities have accommodated 2,585 16- and 17-year-olds without making them looked after children. 1,498 of these young people were living in unregulated accommodation. This means 1 in 5 children housed in unregulated accommodation is not in care.⁴
- Young people have told our front-line practitioners about their experiences of being housed in dirty, unheated and unsafe unregulated accommodation, alongside adults and exposed to drinking, drug taking and sexual harassment. This negatively impacts on their education, physical and mental health.
- Current debate, including DfE’s consultation on unregulated provision for children in care and care leavers⁵ and the Children’s Commissioner’s report,⁶ focuses on the looked-after children housed in unregulated accommodation. We do not believe that any policy changes on unregulated provision stemming from the outcomes of DfE’s consultation would include these young people – the one child in five living in unregulated accommodation without being a looked-after child – in their scope.

Problems with local authority assessments and gatekeeping

- A key underlying driver of the use of unsuitable accommodation is inaccurate assessments and gatekeeping by local authorities. Under Section 20 of the Children Act 1989, local authority children’s services have a duty to accommodate homeless children. Local authority housing services also have a duty to homeless 16- and 17-year-olds who are deemed to be in ‘priority need’ for housing under Part 7 of the Housing Act 1996.

¹ Just for Kids Law (2020) [Not in Care, Not Counted](#)

² Department for Education, [consultation on reforms to unregulated provision for children in care and care leavers](#)

³ Children’s Commissioner for England (2020) [Unregulated: Children in care living in semi-independent accommodation](#)

⁴ Just for Kids Law (2020) [Not in Care, Not Counted](#)

⁵ DfE’s consultation on “[Reforms to unregulated provision for children in care and care leavers](#)” closed in June 2020. The Government is yet to publish their response.

⁶ The report does note that it “focuses on the use of unregulated accommodation for children in care. Other children and young people may find themselves in [unregulated] accommodation, including care leavers and 16-17 year olds who have not been taken into care (as they should be) but accommodated by the council’s housing department instead.”

- However, the ‘Southwark Judgement’ of 2009⁷ found that the Children Act duty should take precedence over the Housing Act. This is reasserted in statutory guidance published in 2010 and updated in April 2018 by the Ministry of Housing, Communities and Local Government (MHCLG) and DfE.⁸

Just for Kids Law experience

- However, we find social workers and local authorities frequently refuse to accommodate and/or provide support to these children and we have to advocate on their behalf and most commonly resort to legal action.
- Out of 29 cases between June 2018-2019:
 - 30% of the children and young people our legal team represented were children (under 18) who the local authority unlawfully refused to look after under Section 20. Due to involvement from our legal team, 78 % children were provided with accommodation from children’s services under Section 20.
 - 55% were young adults who had been refused support under Section 20 when they were children and therefore weren’t getting leaving care support. Due to involvement from our legal team, 75% are now treated as Former Relevant Children (care leavers).
- In the majority of all cases (76%), local authorities conceded following a pre-action letter or a complaint from our legal team, showing that this is often about gatekeeping. We also find that from time to time, social workers seem to be genuinely unaware of their duties to 16- and 17-year-olds under Section 20.
- Children who do not become looked after not only miss out on vital support and contact from a social worker whilst they are a child, they also have fewer legal rights on turning 18. A child in care will become a care leaver on turning 18, and will be eligible for various financial allowances, a safety net should things go wrong with their accommodation, support from the local authority up to age 25, priority access to social housing, etc.

Question to the Government

- The current consultation on unregulated accommodation may lead to policy change but this will leave behind the one child in five who lives in unregulated accommodation but is not in care. What will the Government do to ensure homeless 16- and 17-year-olds receive support as looked-after children (under Section 20) as a default position and are therefore not housed in unregulated accommodation?

Recommendations

- The Government should amend the joint MHCLG/DfE statutory guidance to clarify that as a default position, all homeless under 18s should receive support as a looked-after child (under Section 20) unless they have explicitly said they do not want to, after being made fully aware of their rights and entitlements, and take all steps necessary to ensure local authorities implement this.
- The Government should ensure no child under 18 is placed in unregulated accommodation, regardless of which piece of legislation they are being housed under: all settings housing under 18s should be regulated and inspected by Ofsted.

About us

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

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

⁷ R (G) v Southwark [2009] UKHL 26

⁸ Ministry of Housing, Communities and Local Government and Department for Education, April 2018, [Prevention of homelessness and provision of accommodation for 16 and 17 year old young people who may be homeless and/or require accommodation](#)

Contact details

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