

**Just for Kids Law submission to the Department for Education's  
 consultation on "Introducing national standards for unregulated  
 provision"**

**July 2021**

1. To what extent do you believe that each of these indicators is helpful in determining whether a provider is delivering 'care' or 'support'?

	Very Helpful	Helpful	Neither helpful nor unhelpful	Unhelpful	Very unhelpful
Can young people go out of the establishment without staff's permission?					X
Do young people have full control of their own finances?					X
Do young people have control over what they wear and the resources to buy clothes?					X
Are young people in charge of meeting all their health needs, including such things as arranging GP or specialist health care appointments? Are young people in full control of their medication?					X
Do staff have any access to any medical records?					X
Can young people choose to stay away overnight without first seeking permission?					X
Is there a sanctions policy that goes beyond house rules and legal sanctions that would be imposed on any adult?					X
If the establishment accommodates both adults and young people, do those under 18 have any different supervision, support, facilities or restrictions?					X

Are there regularly significant periods of time when young people are on the premises with no direct staff supervision?					X
Do staff have any responsibility for aftercare once a young person has left?					X
Does the establishment's literature promise the provision of care or relate to specific care support provided to all residents?					X
Does the establishment provide or commission a specialist support service, which forms part of the main function of the establishment?					X

**2. Please explain your answer.**

We believe that the indicators are very unhelpful altogether as the distinction between 'care' and 'support' should not be made when talking about caring for children who are not able to live with their families. As part of the Steering group of the Keep Caring until 18 campaign (<https://article39.org.uk/keepcaringforchildreupto18/>), we believe that all settings housing children under 18 must provide care to these children. The existing children's homes quality standards should apply to all forms of residential care.

**3. Do you agree that the Government should define all of this provision as 'supported accommodation for older children' in future?**

N/a

**4. Please explain your answer, including any alternative suggestions.**

N/a

**5. Please provide examples of the types of independent or semi-independent provision that exist in the sector. For local authorities responding, this may be types of provision that you commission or, for providers, this may be a description of the service you offer. We are keen to hear a range of perspectives on this. These may be broad categories of provider types or bespoke examples.**

**a. What do you call the type of provision(s) that you use/deliver?**

- b. Could you tell us about the provision, including who the provision accommodates, and how the needs of those accommodated are met through different forms of support?
- c. What are the positive features and characteristics of the provision that you would want to retain in future?
- d. What are the negative features and characteristics of the provision that you would not want to retain in future?

N/a

**6. Are there examples of where it would be appropriate to place a looked after child or care leaver aged 16 or 17 in a setting that does not deliver any care or support?**

No.

**7. Please explain your answer.**

We cannot envisage any circumstances where a child would not need to receive any form of care. This is not something a loving and responsible parent or carer would ever do and as corporate parent neither is it something that the state should consider. Children who do not have a familial support network need more, not less, care and support.

All children should be cared for and all settings where 16- and 17-year-olds live should provide care to those children. Under international law, in particular the UN Convention on the Rights of the Child (UNCRC), which the UK ratified in 1991, all children are entitled to special protection from the state at least until they turn 18. 16- and 17-year-olds are children as defined by article 1 of the UNCRC, who still need care in their everyday life.

Children's wishes and best interests must be at the centre of the decision-making affecting them (articles 3 and 12 of the UNCRC). Children's placements must adapt to their needs, which may fluctuate over time. This is true across all placements and all ages. One of the risks of creating two types of establishments housing 16- and 17-year-olds – one type providing 'care' and the other only providing 'support' – is that children whose needs change over time, as do all children's, would need to be moved from one placement to another. This would cause them further instability and stress.

We are also particularly concerned that 16- and 17-year-olds who are housed by their local authorities in unregulated placements, but who are not looked-after, are being left behind by the planned reforms and risk being further marginalised.

Most 16- and 17-year-olds who become at risk of homelessness and approach their local authority for support should be accommodated by children's services under section 20 of the Children Act 1989, which states that local authorities have a duty to accommodate children under 18 who are unable to live with their families. Children accommodated under section 20 become looked-after after 24 hours. Although housing services also hold a duty to homeless 16- and 17-year-olds, as under Part VII of the Housing Act 1996 they have priority need, under the well-known Southwark judgment of 2009 (*R (G) v Southwark [2009] UKHL 26*) local authorities' duties under the Children Act take precedence over their duties under the Housing Act. This was reiterated in the joint statutory guidance *Prevention of homelessness and provision of accommodation for 16 and 17 year old*

*young people who may be homeless and/or require accommodation* published in 2010 by the Ministry of Housing, Communities and Local Government (MHCLG) and the Department for Education (DfE) and updated in 2018 to reflect new duties introduced by the Homelessness Reduction Act 2017.

Our research based on FOIs published last year found that an estimated 1,498 16- and 17-year-olds housed in unregulated accommodation (1 in 5 of all children living in currently unregulated settings) were not made a looked-after child by the local authority they approached for support (<https://justforkidslaw.org/sites/default/files/fields/download/Just%20ofor%20Kids%20Law%20-%20Not%20in%20care%2C%20not%20counted%20-%20June%202020.pdf>). These children are living alone in unregulated settings and do not receive any care or support from their families or children's services, but the minimum standards being considered will not apply to them – 20% of the children living in independent and semi-independent settings.

Though some of these children will have made a fully informed decision not to enter care, many others would not have been given the option or fully informed of the consequences of their choice. Local authorities are allowed to house homeless 16- and 17-year-old under the Housing Act or more rarely and as a last resort under section 17 of the Children Act, instead of as a looked-after child under section 20 of the Children Act, but this must be what the child decides after being fully informed of their options and their consequences.

**Case study: A 17-year-old placed in unregulated accommodation and left without any support**

Jack\* was 19 years old when he approached JfKL. He has mental health difficulties, had been known to children's services since he was very young and had a very difficult relationship with his parents. When Jack turned 17, he was asked to leave the family home forever. He approached the local authority's housing department (unaware of the difference between children's services and housing services) and was accommodated under the Housing Act in an unregulated placement and provided with a £25 food voucher. He was never referred to children's services, despite the fact he was a child at the time and was not provided with any other support. He had no choice but to start working, despite the impact on his benefits, which he struggled to manage, resulting in him accruing rent arrears.

Jack was at risk of eviction when he approached JfKL for help. JfKL argued that in failing to assess his needs under the Children's Act 1989 and to provide him with accommodation under section 20, the local authority acted unlawfully and that it should now treat him as if he were a Former Relevant Child (a care leaver), and provide him with leaving care services to assist his transition into young adulthood. This challenge was successful, and he is now being provided with leaving care services and most of his rent arrears have been cleared.

\*not his real name

Just for Kids Law (JfKL) provides legal and youth advocacy services to children and young people who require support and in 78% of the cases taken on by JfKL's legal team where local authorities had previously unlawfully refused to house these children as looked-after children, local authorities quickly conceded. In the majority of these cases (76%), they conceded following only a pre-action letter or letter from our legal team. Such a high success rate, coupled with the fact most cases are settled as soon as solicitors become involved, illustrates that many of these decisions do not have a basis in law. In fact, these cases arise because of local authorities so called 'gatekeeping' – or limiting access to – resources, stretched local authority funding and arbitrary decision-making, rather than correct application of the joint DfE and MHCLG statutory guidance on homeless 16- and 17-year-olds and accommodating children under section 20. Undoubtedly many more children who

are not aware of their rights, and do not get in touch with services such as ours, fall through the net without ever realising.

As costs of running accommodation for 16- and 17-year-olds who are in care or care leavers increase as a result of the minimum standards, local authorities who all have 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 unsafe for children.

Children have already 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. These experiences would continue to be commonplace among the children living on their own and placed in similar settings by local authorities without being made a looked-after child.

The Government will not succeed in resolving the issues that have been recently been raised in the media in relation to unregulated accommodation – children being sexually and/or criminally exploited, exposed to alcohol and drugs, violence including sexual violence - until it ensures that all children who cannot live with their families are cared for.

In particular, the Government should amend the joint MHCLG/DfE statutory guidance on *Prevention of homelessness and provision of accommodation for 16 and 17 year old young people who may be homeless and/or require accommodation* to clarify that as a default position, all homeless children (under 18) should receive support as a looked-after child (under section 20 of the Children Act) unless they have explicitly said they do not want to 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 write to all Directors of Children's Services to ensure that they are aware of their responsibilities in the joint MHCLG/DfE statutory guidance to provide independent advocacy to children in this situation. All local authorities should fund or commission statutory advocacy services to actively provide advice and support to these children, as recommended in the joint statutory guidance.

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.

The Government should urgently take steps to ensure that all local authorities are aware that children are expected to be housed under section 20 in almost all circumstances and that use of section 17, the Housing Act or other arrangements should not be routine practice in local authorities' response to homeless 16- and 17-year-olds. These steps should include:

- A letter from the Secretary of State to remind local authorities of their legal duties.
- A duty to report to the Director of Children's Services every time a child is accommodated without becoming looked after.

- Delivery of training to local authority homelessness and children's services departments on their duties to 16- and 17-year-olds who are homeless.

Following the Care Review, the Government should consider amending legislation and the joint MHCLG/DfE statutory guidance to create a new status of 'vulnerable 16- or 17-year-old' for homeless under 18s who are assessed as children in need (section 17) and who refuse to become accommodated under section 20, which would 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 at a minimum the same entitlements as qualifying care leavers once they turn 18. The joint statutory guidance should also be amended to stipulate that where a vulnerable child is assessed to be a child in need, but refuses to become looked after, they are allowed to change their mind if the solution they chose does not work for them or if risks escalate and they need to be supported without any further delay.

Local authorities should regularly gather and publish data on the numbers of children accommodated under section 17 of the Children Act, Part VII of the Housing Act or other arrangements and in what type of accommodation these children are placed. This should be monitored by DfE and Ofsted.

The Government should ensure that local authorities have sufficient resources to allow them to fulfil their statutory duties to children who should be looked after under section 20 and to provide them with access to independent advocacy.

The Government should amend the *Homelessness code of guidance for local authorities* to include a duty for local authorities to assess whether a young person who is aged 18 to 24 and presenting as homeless should have been made a looked-after child when they were under 18 and thus should have care leaver entitlements, including priority need under homelessness legislation.

**8. Are the proposed national standards missing anything that you would expect of any provider of independent and/or semi-independent provision?**

N/a

**9. Are there any elements of the proposed national standards that you think would be difficult for providers to implement?**

N/a

**10. Which elements of the proposed national standards do you expect would carry the most significant costs? Please explain your answer, providing estimates of cost where possible.**

N/a

**11. How much do you expect the costs of provision to increase by if these national standards are introduced? Please explain your answer, providing estimates of cost where possible.**

N/a

**12. What do you think the main advantages would be of a model where Ofsted registers and inspect at individual-setting level?**

N/a

**13. What do you think the main disadvantages would be of a model where Ofsted registers and inspect at individual-setting level?**

N/a

**14. What do you think the main advantages would be of a model where Ofsted registers and inspects at provider level?**

N/a

**15. What do you think the main disadvantages would be of a model where Ofsted registers and inspects at provider level?**

N/a

**16. If you think an alternative model would be appropriate, please explain this.**

N/a

**17. How often do you think providers and/or settings should be inspected? Please explain your answer, including if you think this inspection should be at provider- level or individual-setting level, as set out in the previous question.**

N/a

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

[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 lack of secure and suitable housing for homeless children, families and young people across England is part of our casework and campaigning. We work with children and young people to campaign for their right to have safe and secure housing, to ensure they get the housing support they need from local authorities, to challenge decisions which deny children and young people their statutory entitlements to housing support and to find housing which is safe and suitable.

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.

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

#### **Contact details**

For further information, please contact Eloïse Di Gianni, Policy Officer (Housing and Social Care), Just for Kids Law: [eloisedigianni@justforkidslaw.org](mailto:eloisedigianni@justforkidslaw.org).