

**Briefing – House of Lords, Motion to take note:
Care Planning, Placement and Case Review (England) (Amendment) Regulations 2021,
22nd March 2021**

‘16- and 17-year-olds in unregulated accommodation who are not in care’

Key message: 1 in 5 of all children housed in unregulated accommodation will not be affected by these regulations or the planned national minimum standards, as they are not looked-after children.

- The vast majority of 16- and 17-year-olds who are homeless or at risk of homelessness and approach local authorities for help should be accommodated as a looked-after child under Section 20 of the Children Act.
- But our FOIs found that in 2018-19, an estimated 1,498 16- and 17-year-olds housed in unregulated accommodation (1 in 5 of all children living in such settings) were not made a looked-after child by the local authority they approached.¹
- Not being housed as a looked-after child 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 the age of 25.
- These children are being left behind as the Government’s planned reforms – to ban children in care who are under 16 from being placed in unregulated settings and to create national minimum standards for unregulated placements accommodating 16- and 17-year-old looked-after children – do not include them in their scope.
- We additionally support the call for extending the planned ban on under 16s in unregulated accommodation 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 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.¹
- 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.
- From last year’s DfE consultation on unregulated provision for children in care and care leavers² and the Children’s Commissioner’s 2020 report on unregulated provision³ to the subsequent reforms to unregulated provision for children in care announced by the government last month, the current discourse focuses on the looked-after children housed in unregulated accommodation. The planned reforms will not include these other vulnerable 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 VII of the Housing Act 1996.

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

² The [outcomes](#) of the consultation were published in February 2021 and only included a brief paragraph on this issue (pages 13-14).

³ The Children’s Commissioner’s [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.”

- But the ‘Southwark Judgement’ of 2009⁴ 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 MHCLG and DfE.⁵ Local authorities must follow statutory guidance unless there is an exceptional reason for them not to do so.

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 commonly resort to legal action.
- These 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 entitlements 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 homelessness support, etc.
- 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 % of these 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 were not getting leaving care support. Due to involvement from our legal team, 75% of these young adults 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.

Question to the Government

- The planned reforms to unregulated provision 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?

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 that reforms to unregulated provision extend to all children placed in unregulated accommodation, regardless of which piece of legislation they are being housed under.
- The Government should review current plans and extend the planned ban on under 16s being placed in unregulated accommodation to all children under 18, as detailed in the briefing Article 39 will be circulating for this debate.

Case study – a 17-year-old left without support in an unregulated placement

When Jack* turned 17, he was asked to leave the family home forever. Jack had been known to children’s services since he was very young - he had a very difficult relationship with his parents and mental health difficulties. Unaware of the difference between children’s services and housing services, Jack approached the local authority’s housing department and was accommodated in an unregulated placement under the Housing Act 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.

⁴ R (G) v Southwark [2009] UKHL 26

⁵ 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](#)

Jack was 19 years old and at risk of eviction when he approached JfKL. JfKL's legal team 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

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 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 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. 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.

For further information:

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Just for Kids Law published a report on this issue in June 2020 which you can access here for further details and our full recommendations on the issue as well as an additional case study: [Not in Care, Not Counted - A legal loophole: homeless 16- and 17-year olds and unregulated accommodation.](#)