

# Practice Guidance Southwark Judgement

## Practice Guidance

### Supporting families to stay together and re-unification

It is in the best interests of most young people aged 16 or 17 to live in the family home, or, where this is not safe or appropriate, with responsible adults in their wider family and friends network. Children's Services response to 16 and 17 year olds seeking help because of homelessness should explicitly recognise this and work proactively with young people and their families to identify and resolve the issues which have led to their potential homelessness.

### What is the Southwark Judgement?

The law surrounding the Local Authority's duty to accommodate a child in need was clarified in a landmark case – [R \(G\) v The London Borough of Southwark \[2009\]](#)

This ruling clarified the responsibility of children's services for accommodating homeless young people aged 16 and 17 under the Children Act 1989. It made clear that children's services should:

- 'Presume that any lone, homeless child should be provided with accommodation under S.20 unless the child is not (based on an initial screening assessment) a child in need.';
- 'The Children Act has primacy over the Housing Act in providing for children in need';
- The Southwark Judgment also emphasised the continuing duty of housing and children's services to collaborate in the discharge of their duties to children and young people;

### Referral

- If a young person (YP) aged 16 or 17 presents as Homeless a referral will need to be made to Integrated Front Door (IFD) for initial checks and information gathering. The family circumstances must be gathered by IFD i.e. parents, carers, anyone with parental responsibility, family members, health, education and any other agencies involved in the care of the young person
- IFD should contact parents/carers/ persons with PR and the young person to explore whether any support can be provided to mitigate the current crisis. Consent must be sought from those with PR and the young person to conduct welfare checks and gather information
- Welfare checks with other agencies as part of the information gathering should be considered to get a holistic experience of the young person's lived experience.
- Explore whether there are family or friends that are appropriate to provide alternative accommodation
- Early Help support should be considered as part of the support package for the family
- If an assessment is required i.e. if the YP is either going to be homeless or is homeless and there is no other support that can be put in place, this will be sent to the Assessment team for further intervention.
- In the event of an emergency and the YP is deemed to be homeless, emergency accommodation must be provided on the day

### Assessment

- The Young Person and their parents/carers/ persons with PR need to be aware that the assessment will explore the housing and individual needs of the young person in line with the Framework for the Assessment of Child in Need and their families

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- The Assessment will determine whether the child's needs and also determine specifically in respect of any need to accommodation whether that is under s17 or s20. Local Authority will provide accommodation and legal status i.e. s17 vs s20
  - At least one home visit will need to be completed to the family home to assess the living conditions and understand the lived experience of the young person. The Assessment will also need to consider any further support that could be offered to the family
  - It is vital that throughout the assessment there is regular communication with the young person and their family to ensure that they are aware of the on-going circumstances
  - From the onset of the Assessment consideration should be given to exploring intensive family support to test out whether the young person can remain/ return safely back to the family home.
  - Where emergency accommodation to the young person has been provided, an assessment should be completed within 10 working days to determine whether further accommodation is required and if so, whether this should be under s17 or s20.
  - Accommodation support should be discussed between the Social Worker (SW) & Advanced Practitioner (AP) followed by discussion with the Team Manager (TM). Prior to any commencement of accommodation support, approval must be given by the Head of Service via emergency or planned resource panel request
  - If the recommendation is for s20 accommodation, suitable accommodation should be identified and the young person placed. The legal documents for s20 should be signed by the young person and/or persons with PR. The young person may be deemed as Gillick competent to consent to the s20 accommodation themselves. The Care Plan should consider a rehabilitation to the family together with a plan for independent living if the young person cannot return home
  - If the recommendation is for s17 accommodation, suitable accommodation should be identified and the young person placed. There should be a comprehensive plan to consider rehabilitation home and independent living as a contingency
  - If the recommendation is for s17 support and the young person to return home, a comprehensive plan must be identified to consider what intervention is required to prevent a future breakdown of the family placement.
  - Family group conferencing should be a standard part of the Assessment process
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- The Assessment should consider the following Southwark judgement checklist:

## Southwark judgment checklist

### 1. Is the person a child?

Under the [Children Act 1989](#) a 'child' means any person under the age of 18 years (16 years if married).

### 2. Is the child in need?

*"It cannot seriously be suggested that a child excluded from home who is 'sofa-surfing' in this way, more often sleeping in cars, snatching showers and washing his clothes when he can, is not in need."* (Baroness Hale)

### 3. Is he/she within the Local Authority's area?

In order to satisfy this test, habitual residence is not required but the child or young person should have a physical presence in that Local Authority area. A Local Authority can refer a child or young person to another Authority, where they are more commonly residing, but the child or young person must not be continually passed between Local Authorities whilst they decide where they come from. It is possible for a child to be within the area of two local authorities at once, for example if they reside in one area and attend school in another.

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## **4. Does the child appear to the Local Authority to require accommodation?**

Where the child or young person is homeless or sofa surfing, it is clear that they require accommodation. However where they can stay with family or friends, but need support to settle in or need the placement to be made safe or habitable, section 20 may not arise.

## **5. Is that need the result of any of the criteria within [section 20\(1\) Children Act 1989](#)?**

A Local Authority will have a duty to accommodate under the Children Act if:

- no one has Parental Responsibility for the child;
- the child is lost or abandoned;
- the person who has been caring for the child is unable to provide suitable care and accommodation; or
- the child is 16 or 17 years old and the Local Authority considers the child's welfare would be seriously threatened if it does not provide accommodation.

These rules also apply to asylum seekers.

A child or young person not willing to live with parents is not enough on its own to warrant homelessness, but incompatibility and a breakdown in the relationship between parent and child or young person may be sufficient.

## **6. What are the wishes and feelings of the child or young person in respect of accommodation?**

A child's wishes and feelings will be taken into account when considering if they can continue to live at home.

## **7. What consideration (having regard to the child's age and understanding) is duly to be given to those wishes?**

## **8. Does any person with Parental Responsibility who is willing to provide accommodation for the child object to the Local Authority's intervention?**

## **9. If there is an objection, does the person named in a Child Arrangements Order as a person with whom the child is to live agree to the child being looked after by the Local Authority?**

## **Further questions to consider as part of the Assessment**

- 1. What is the reason for homelessness?*
- 2. How long has the YP been homeless?*
- 3. How has the YP been managing to support themselves in the time that they have been homeless?*
- 4. From the perspective of the YP/carers/family members, what would need to change in order for the young person to remain at home?*
- 5. If the YP was to go home, what support would the family need to manage the YP remaining at home?*
- 6. What support has been put in place previously to support the YP? What did/did not work well?*
- 7. Have there been any times when the YP's placement at home has been stable? Why did this work well?*
- 8. When there have been difficulties previously, what has helped resolve these difficulties? Who/what has helped with this?*
- 9. What are the YP/carers goals for the future? Where do they see themselves in 3 months, 6 months, 1 year?*
- 10. Does the YP person have any other issues in relation to Serious Youth Violence, Criminal/ Sexual exploitation, mental health, substance misuse, learning needs.*

## **Allocation and Management oversight**

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- Cases will be allocated by the AP or TM and will need to ensure that there is a case discussion with the allocated SW at the earliest opportunity to ensure timely decision regarding accommodation
- The case allocation should clearly outline the above Southwark Judgement checklist to be followed as part of the assessment process
- Social Workers to ensure that they read the management oversight and Southwark Judgement Practice Guidance to inform their practice and case management

## Legal status as outlined in the Government Guidance

**Section 17 of the 1989 Act** sets out the responsibilities of local authorities to provide services for children in need and their families. It is the general duty of every local authority;

- to safeguard and promote the welfare of children within their area who are in need; and
- so far as is consistent with that duty, to promote the upbringing of such children by their families by providing a range and level of services appropriate to those children's needs.

In addition, **under section 47 of the 1989 Act**, if a local authority has reasonable cause to suspect that a child living in their area is suffering or likely to suffer significant harm, they are under a duty to investigate. This is to enable them to decide whether they should take any action to safeguard or promote the child's welfare.

**Section 17(10) of the 1989 Act** defines a child as being in need if;

- they are unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for them of services by a local authority under this Part;
- their health or development is likely to be significantly impaired, or further impaired, without the provision for them of such services;
- they are disabled

The duties described in **section 17** apply to all children in need in the area of the local authority. A child is any person under the age of 18 (see section 105(1) of the 1989 Act).

**Section 20(1)** requires that:

- every local authority shall provide accommodation for any child in need within their area who appears to them to require accommodation as a result of –
  - there being no person who has parental responsibility for them;
  - their being lost or having been abandoned; or
  - the person who has been caring for them is prevented (whether or not permanently, and for whatever reason) from providing them with suitable accommodation or care.

In addition, even if the criteria in section 20(1) do not apply, section 20(3) requires that:

- Every local authority shall provide accommodation for any child in need within their area who has reached the age of sixteen and whose welfare the authority consider is likely to be seriously prejudiced if they do not provide them with accommodation.

In addition, section 20 (4), provides that:

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- A local authority may provide accommodation for any child within their area (even though a person who has parental responsibility for them is able to provide them with accommodation) if they consider that to do so would safeguard or promote the child's welfare.

Local authority duties for accommodating young people under this section are not simply a matter for local policy. The duty is engaged whenever a child in need in the local authority's area requires accommodation as a result of one of the factors set out in section 20(1)(a) to (c) or in section 20(3).

Where a young person in need requires accommodation as a result of one of the factors set out in section 20(1) (a) to (c) or section 20(3) then that young person must be provided with accommodation. As a result of being accommodated by children's services for a continuous period of more than 24 hours the young person will become looked after, and the local authority will owe them the duties that are owed to all looked after children, and once they cease to be looked after, the duties that are owed to care leavers under that Act. Whilst accommodated under section 20 the young person will not be eligible for welfare benefits, including housing benefits or housing costs under universal credit. Children's services will have a duty to maintain them, including meeting the cost of accommodation.

There are only two circumstances in which a local authority might find that a homeless young person should not be accommodated under Section 20, and may instead be owed duties under Housing Act 1996. These are where the young person is:

- not a child in need;
- a 16 or 17 year old child in need who, having been properly and fully advised of the implications and having the capacity to reach a decision, has decided that they do not want to be accommodated under section 20.

A 16 or 17 year old, who is competent and has all the information they need to make an informed decision, cannot be obliged to accept accommodation under S20 if they do not want it. Furthermore, a 16 or 17 year old who has been accommodated under S20 may decide on the same basis that they no longer wish to be accommodated under S20. It is important that young people are given appropriate information to help them understand the implications of being in care, the support they will be offered and the fact that they will have a care plan that will be regularly reviewed. They should understand the difference between services offered to children in care and services offered under housing legislation