



16 & 17-year-olds and unregulated accommodation

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Today's webinar

- Unregulated accommodation for **children in care** (s.22C(6)(d) Children Act 1989)
- Unregistered accommodation and when this may be illegal
- Homeless children & unregulated accommodation (ss.17 & 20 Children Act 1989 & Part VII Housing Act 1996)
- Q & A

Context

Revealed: thousands of children in care placed in unregulated homes

Lack of facilities to house vulnerable children in UK has led to rise in unsafe placements



Government 'to ban' placing children in unregulated homes

By Noel Titheradge and Ed Thomas
BBC News

🕒 12 February 2020



Unregulated accommodation for children in care

Children Act 1989, s.22A: Provision of accommodation for children in care

When a child is in the care of a local authority, it is their duty to provide the child with accommodation.

Children Act 1989, s.22C

Ways in which looked after children are to be accommodated and maintained

- (1) This section applies where a local authority are looking after a child (“C”).*
- (2) The local authority must make arrangements for C to live with a person who falls within subsection (3) (but subject to subsection (4)).*
- (3) A person (“P”) falls within this subsection if—*
 - (a) P is a parent of C;*
 - (b) P is not a parent of C but has parental responsibility for C; or*
 - (c) in a case where C is in the care of the local authority and there was [a child arrangements order] in force with respect to C immediately before the care order was made, P was a person [named in the child arrangements order as a person with whom C was to live].*

Children Act 1989, s.22C

(4) Subsection (2) does not require the local authority to make arrangements of the kind mentioned in that subsection if doing so—

(a) would not be consistent with C's welfare; or

(b) would not be reasonably practicable.

*(5) If the local authority are unable to make arrangements under subsection (2), they must place C in the placement which is, in their opinion, **the most appropriate placement available.***

Children Act 1989, s.22C

(6) In subsection (5) “placement” means—

(a) placement with an individual who is a relative, friend or other person connected with C and who is also a local authority foster parent;

(b) placement with a local authority foster parent who does not fall within paragraph (a);

(c) placement in a children's home in respect of which a person is registered under Part 2 of the Care Standards Act 2000...;or

*(d) subject to section 22D, **placement in accordance with other arrangements** which comply with any regulations made for the purposes of this section.*

Children Act 1989, s.22C

(7) In determining the most appropriate placement for C, the local authority must, subject to [subsection (9B) and] the other provisions of this Part (in particular, to their duties under section 22)—

(a) give preference to a placement falling within paragraph (a) of subsection (6) over placements falling within the other paragraphs of that subsection;

(b) comply, so far as is reasonably practicable in all the circumstances of C's case, with the requirements of subsection (8); and

(c) comply with subsection (9) unless that is not reasonably practicable.

Children Act 1989, s.22C

(8) The local authority must ensure that the placement is such that—

(a) it allows C to live near C's home;

(b) it does not disrupt C's education or training;

(c) if C has a sibling for whom the local authority are also providing accommodation, it enables C and the sibling to live together;

(d) if C is disabled, the accommodation provided is suitable to C's particular needs.

(9) The placement must be such that C is provided with accommodation within the local authority's area.

Children Act 1989, s.22D

Review of child's case before making alternative arrangements for accommodation

(1) Where a local authority are providing accommodation for a child ("C") other than by arrangements under section 22C(6)(d), they must not make such arrangements for C unless they have decided to do so in consequence of a review of C's case carried out in accordance with regulations made under section 26.

(2) But subsection (1) does not prevent a local authority making arrangements for C under section 22C(6)(d) if they are satisfied that in order to safeguard C's welfare it is necessary—

(a) to make such arrangements; and

(b) to do so as a matter of urgency.[...]

Care Planning, Placement and Case Review (England) Regulations 2010

Reg 27: General duties of the responsible authority when placing a child in other arrangements

Before placing a looked after child (C) in accommodation in an unregulated setting under section 22C(6)(d), the responsible authority must—

- (a) be satisfied that the accommodation is suitable for C, having regard to the matters set out in Schedule 6,*
- (b) unless it is not reasonably practicable, arrange for C to visit the accommodation, and*
- (c) inform the IRO.*

***Note following Q&A:** although the Adoption and Children (Coronavirus) (Amendment) Regulations 2020 (SI 445) made some changes to the Care Planning Regs, they have not altered Reg 27 (above) or Sch 6 (next slide).

Care Planning, Placement and Case Review (England) Regulations 2010

Schedule 6: Matters to be considered before placing C in accommodation in an unregulated setting under section 22(6)(d)

Para 1:

In respect of the accommodation, the—

- (a) facilities and services provided,*
- (b) state of repair,*
- (c) safety,*
- (d) location,*
- (e) support,*
- (f) tenancy status, and*
- (g) the financial commitments involved for C and their affordability.*

Para 2:

In respect of C, C's—

- (a) views about the accommodation,*
- (b) understanding of their rights and responsibilities in relation to the accommodation, and*
- (c) understanding of funding arrangements.*

Unregulated accommodation for children in care: summary

- LAs have a power to accommodate children in care in unregulated accommodation, pursuant to s.22C(6)(d) of the Children Act 1989, providing, in summary:
 - a placement with a family member is not available: s22C(2)-(7) CA 1989;
 - they comply with certain requirements insofar as that is reasonably practicable, including ensuring that the placement does not disrupt the child's education and that it is within the local authority's area: ss22C(7)-(9) CA 1989;
 - they review the child's case before placing them in the unregulated placement: s22D CA 1989 (unless the move is necessary for child protection reasons as a matter of urgency); **and**
 - the placement is suitable, having regard to the factors at Schedule 6 of the Care Planning, Placement and Case Review (England) Regulations 2010, which include (a) the facilities and services provided; (c) safety; (d) location and (e) support.

Unregulated Vs unregistered accommodation in a nutshell

What are unregistered and unregulated provision?

Many people are unsure what we mean by unregulated and unregistered provision, and often confuse the two. They're different things.

Unregulated provision is allowed in law. This is when children (usually over the age of 16) need support to live independently rather than needing full-time care. Ofsted do not regulate this type of provision.

It should be used as a stepping stone to independence, and only ever when it's in a child's best interests. For many children, it's the right choice. Some children do not want to live with foster parents or live in a children's home. For some unaccompanied asylum-seeking children this can be the right option too, but not for all.

Unregistered provision is when a child who's being provided with some form of 'care' is living somewhere that is not registered with Ofsted. This is illegal. Once a provider delivers a care element as well as accommodation, they must register as a children's home. It's an offence not to.



Source:

<https://socialcareinspection.blog.gov.uk/2019/07/08/unregistered-and-unregulated-provision-whats-the-difference/>

Care Standards Act 2000

Definition of a children's home

- S.1(2): *An establishment is a children's home...if it provides care and accommodation wholly or mainly for children.*
- But – no definition of 'care' anywhere in the legislation

***Note following Q&A:** although no definition of 'care' in the legislation, you may find the Children's Home Regulations 2015, Reg. 6 ('The quality and purpose of care standard') instructive.

Care Standards Act 2000

S.5:

(1) For the purposes of this Act

*(a) the registration authority in the case of establishments and agencies mentioned in subsection (1A) is Her Majesty's Chief Inspector of Education, Children's Services and Skills (referred to in this Act as "the CIECSS"); **(in other words, the head of Ofsted)***

...

*(1A) The establishments and agencies [mentioned in subsection (1)(a)]⁵ are—
children's homes in England.*

Care Standards Act 2000

S.11:

(1) Any person who carries on or manages an establishment or agency of any description without being registered under this Part in respect of it (as an establishment or, as the case may be, agency of that description) shall be guilty of an offence.

Unregistered accommodation: summary

- Under the Care Standards Act 2000, s.11, all children's homes must be registered with Ofsted, otherwise the manager of the establishment will be guilty of a criminal offence.
- Accommodation that purports to be supported living accommodation for 16-17 year olds will only need to be registered with Ofsted if it meets the definition of a children's home under s.1(2) of the Care Standards Act 2000, namely: *if it provides care and accommodation wholly or mainly for children.*

DfE consultation: Reforms to unregulated provision for children in care & care leavers

- DfE commissioned research (Feb 2020) – [Use of unregulated and unregistered provision for children in care](#)
- Key findings included:
 - Majority of children in independent/semi-independent accommodation were aged 16+; small number aged under 16
 - LAs reported clear distinction between ‘planned’ & ‘unplanned’ placements
 - Overall quality of provision reported by LAs to be highly variable
 - Misunderstanding amongst LAs as to what provision constitutes ‘care’ and should therefore be registered with Ofsted. This can lead to LAs and providers inadvertently operating unregistered (illegal) provision.

DfE consultation: Reforms to unregulated provision for children in care & care leavers

- Proposals include:
 - banning the use of unregulated independent and semi-independent provision for under 16s;
 - introducing “national quality standards”;
 - amending the legislation to clarify the distinction between unregulated and unregistered provision;
 - increasing Ofsted’s powers to take action against illegal providers.
- Watch this space!
- https://consult.education.gov.uk/unregulated-provision/unregulated-provision-children-in-care/supporting_documents/Unregulated%20consultation%20FINAL%20link.pdf

Just for Kids Law

A brief overview of s17 and s20 Children Act 1989

16th July 2020

Mital Raithatha, Head of Education and Community Care

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Child in Need - s17 Children Act 1989

s17(10) Children Act 1989 states that a child is considered a Child in Need if:

- *(a) he is 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 him of services by a local authority under this Part;*
- *(b) his health or development is likely to be significantly impaired, or further impaired, without the provision for him of such services; or*
- *(c) he is disabled,*

The local authority has a duty to Children in Need within their area under s17(1) to:

- *(a) safeguard and promote welfare*
- *(b) promote the upbringing of such children by their families in so far as consistent with (a)*
- *by providing a range and level of services appropriate to those children's needs*

...Child in Need continued

- [Working Together to Safeguard Children \(2018\)](#) states that (page 20):
 - local authorities are required to provide services for children in need for the purposes of safeguarding and promoting their welfare.
 - Local authorities undertake assessments of needs of individual children and must give due regard to a child's age and understanding when determining what, if any, services to provide. Every assessment must be informed by the views of the child as well as the family, and a child's wishes and feelings must be sought regarding the provision of services to be delivered.
- There is no exhaustive list of support. Some examples of support under s17:
 - Accommodation (this can include the whole family)
 - Financial support
 - Education
 - Health
 - Other services in order to meet the assessed needs of the child and its family. For example, respite care; vouchers; clothing; advocacy services.

Looked After Child - s20 Children Act 1989

S20(1) Children Act 1989 state:

- *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—*
 - (a) there being no person who has parental responsibility for him;*
 - (b) his being lost or having been abandoned; or*
 - (c) the person who has been caring for him being prevented (whether or not permanently, and for whatever reason) from providing him with suitable accommodation or care.*

...Looked After Child continued

The case of **R(G) v London Borough of Southwark [2009] UKHL 26** sets out a series of questions to establish if s20 applies:

- Is the applicant a child?
- Is the applicant a child in need?
- Is he within the LA's area?
- Does he appear to the LA to require accommodation?
- Is that need the result of:
 - There being no person who has parental responsibility for him, or
 - His being lost or having been abandoned, or
 - The person who has been caring for him being prevented (whether or not permanently or for whatever reason) from providing him with suitable accommodation or care.
- What are the applicant's wishes and feelings?
- What consideration should be given to those wishes and feelings?

If the criteria above are met, an automatic **duty arises to provide accommodation** to the child under s20 Children Act 1989 as a 'Looked After Child'. Unless the child does not want this and s/he is old enough to understand the consequences of refusing s20 accommodation.

...Looked After Child continued

Duties owed to Looked After Children include:

- to provide accommodation for the child (near or with family member if compatible with safeguarding & promoting welfare);
- to safeguard and promote the welfare of the child;
- to maintain the child in other respects (eg financial and emotional support);
- to consider the child's wishes & feelings whenever making decisions;
- social worker to visit the child at least every 6 weeks;
- to promote educational achievement;
- an Independent Reviewing Officer must be appointed to the Looked After Child.

16 and 17 year olds

[Prevention of homelessness and provision of accommodation for 16 and 17 year old young people who may be homeless and/or require accommodation – statutory guidance](#) helpful provisions:

- Children’s service (‘CS’) duties – Chapter 3 sets out what Children’s services should do in relation to accommodation of this client group.
- Housing service duties – Chapter 4 sets out what Housing services should do if a 16/17 year old approaches for accommodation.
- Joint Working to prevent and resolve homelessness – Chapter 6
- Where young people approaches/ referred to CS as appearing to be homeless or threatened with homelessness within 56 days, they must carry out an assessment, even when the young person is nearly 18 (para 3.1).
- If young person is accommodated by children’s services for a continuous period of more than 24 hours he/she will become looked after, and the local authority will owe them the duties that are owed to all looked after children (para 3.12).
- There are only two circumstances in which a local authority might find that a homeless young person should not be accommodated under s20 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 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 s20 (para 3.13).
- CS have a duty to ascertain the young person’s wishes and feelings and give due consideration to them (para 3.39).
- Young people should have access to independent advocacy (para 3.46- 3.47)

Former Relevant Child ('FRC')

Where a Child has been Looked After for at least **13 weeks** before reaching the age of 18 (this does not have to be continuous but needs to be between 14-18 years old, with at least some time over age of 16), he /she will be a Former Relevant Child and will be entitled to ongoing support.

- A young person is a Former Relevant Child up until 25 (the LA has duty to provide services from 18 to 21, after 25 it has a duty to provide advice and support if the young person wishes to receive it – s23CZB Children Act 1989).
- The young person should be supported to transition into adulthood. Entitlements include:
 - a personal adviser,
 - a pathway plan,
 - assistance with employment education and training,
 - help with living costs including leaving care grant,
 - higher education bursary,
 - assistance to the extent their welfare requires it,
 - Former Relevant Children are 'priority need' for Housing.

S20 or s17 or Housing Act 1996

Accommodated under s20 Children Act 1989:

- 16 or 17 year old young person will be Looked After by the local authority and provided with support until the young person turns 18.
- The young person will be entitled to leaving care support (if meets 13 week criteria) when he/she turns 18 years old until 25.
- The local authority acts as a safety net throughout the young person's transition into adulthood.

Accommodated under s17

- The 16 or 17 year old is a Child in Need not Looked After Child, therefore the local authority will only have a duty to safeguard and promote his/her welfare.
- The young person will not be entitled to any of the support owed to Looked After Children or Leaving Care support.

Accommodated under Part VII Housing Act 1996

- The 16 or 17 year old is not Looked After and therefore is not entitled to any of the support owed to Looked After Children or Leaving Care support.
- No other support available via the housing department. If for whatever reason the 16 or 17 year old is found to be intentionally homeless, their duty under Part VII will have been discharged and no further duty will be owed.

Case study

Megan became homeless when her mother passed away and her relationship with her stepfather broke down irrevocably. Her biological father had been abusive towards her and her mother, and she was not in contact with him.

She approached the local authority's children's services department aged 16 on multiple occasions and was told there was no accommodation available for her. During this period she was forced to spend the night in places that were open for 24 hours, such as McDonalds' restaurants, casinos and hotel receptions. Eventually she was placed in an unregulated placement however she was asked to leave after only two weeks because she let a friend of hers, a child, spend the night at the accommodation, which was a breach of the rules. She then became homeless and sofa surfed again before being housed again in a hostel and eventually in another unregulated placement where she stayed for six months.

The only form of support she received throughout this period was in the form of food vouchers and, as a result of her financial difficulties, she became involved in criminal activities. At no point was an assessment of her needs made, or the difference between being accommodated by children's services or by housing services explained to her. When she was 18, she was told her case was going to be closed despite her still wanting and needing ongoing support. She was evicted from her accommodation and became homeless again.

JfKL argued that Megan was a child when she first approached the local authority and should have had her needs assessed and been accommodated under Section 20 and that it should now provide with her leaving care support as a Former Relevant Child. The local authority initially refused to do this, arguing that Megan never accepted formally to be looked after by the local authority. We threatened judicial review proceedings and prior to issuing proceedings, the local authority agreed to treat Megan as a Former Relevant Child and provide her with support as a care leaver (without admitting fault).

Just for Kids Law research on homeless under 18s and unregulated accommodation

16th July 2020

Kady Murphy, Policy Officer (Housing and Social Care)

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Why we decided to look at this issue

- Longstanding, frequent issue in legal and advocacy casework – homeless children not receiving S20
- Anecdotal evidence from other organisations – widespread/systemic
- Scale of issue nationally (vs London casework)
- Unregulated accommodation consultation (DfE) → only children in care

Unregulated accommodation consultation

- Commissioned research on looked after children in independent or semi-independent placements
- Found that 6,180 looked after children were living in these settings at 31 March 2019
- Research did not look at children in unregulated settings who are not in care
- Proposals for reform (ban for under 16s, regulation options) will not directly impact children in unregulated settings who are not in care

Scope of research

Freedom of Information requests to all English local authorities (343) asking:

- 1) How many 16 and 17 year olds housed under Section 17 and Part VII of the Housing Act
- 2) How many in these categories (S17 and Part VII) housed in unregulated settings?
- 3) To share their Joint Protocol on homeless 16 and 17 year olds (required by statutory joint guidance)

39% of local authorities responded

Findings - children housed outside of section 20

- We estimate that in 2018-2019, local authorities accommodated **2,585** 16- and 17-year olds without making them looked after children (41% under Part VII, 59% under Section 17)
- This is a small increase on the previous year (2,470 in 2017-18)

Findings - children housed outside of section 20

	1 April 18 – 31 March 19	1 April 17 – 31 March 18
Section 17	592	564
Part 7 of Housing Act	418	401
Total 16- and 17-year olds housed without becoming looked after	1,010	965
Projection across all local authorities	2,585	2,470

Findings - children in unregulated settings who are not in care

- We estimate that at 31st March 2019 **1,498 16 and 17 year olds** who were not looked after were housed in unregulated settings.
- Again, this is a small increase on the previous year (1,402 at 31st March 2018)

Findings - children in unregulated settings who are not in care

	At 31 March 2019	At 31 March 2018
Section 17	357	328
Part 7 of Housing Act	228	220
Total 16- and 17- year olds housed in unregulated accommodation under different legal categories	585	548
Projection across all local authorities	1,498	1,402

Findings - summary

- Around 2,500 children aged 16 or 17 are accommodated each year without becoming looked after
- Around 1,500 children aged 16 or 17 who are not looked after are housed in unregulated settings at any one time



**1 in 5 children
housed in
unregulated
accommodation
are not in care**

Why does this matter?

- **A child who is not housed under Section 20 will receive a much lower level of support. They will not be entitled to:**
 - ...support before they are 18**
 - A social worker
 - Financial allowances from the local authority
 - Payment of rent (likely to be required to claim housing benefit)
- Lack of guaranteed additional support beyond housing is particularly concerning in light of minimal support provided in some unregulated settings (eg minimal staff contact).
- Without oversight of a social worker, this is a concerning situation which can leave children at risk.

Why does this matter?

- **A child who is not housed under Section 20 will receive a much lower level of support. They will not be entitled to:**
 - ...support after they turn 18 – care leaver status**
- Support from the local authority through access to a personal adviser until they turn 25
- Support with education/employment
- A safety net if they become homeless up to 21
- Priority access to social housing
- £2,000 setting up home allowance

A parallel system

- Report highlights that children with similar case histories and support needs receive different entitlements
- Arbitrary/postcode lottery as to who gets Section 20 and who doesn't
- Children can be housed in same unregulated setting under Section 17, Section 20 and Part VII all receiving different entitlements

Legal loophole

Local authorities can accommodate a child without making them looked after if this is what the child decides.

But the local authority must be satisfied "***that the young person's decision is properly informed, and has been reached after careful consideration of all the relevant information.***"

From MCHLG and DfE joint 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](#)

Instead we see examples of local authorities persuading young people to go down the Housing Act route (presumably as much cheaper option).

Things local authorities have said to young people

- “If you become looked after this will involve frequent visits from social workers”
- “Under Section 20 the only accommodation available is foster care”
- “Section 20 accommodation is not available for you as you are 17 1/2”
- “Would you like to be in foster care or be independent?”
- “You are independent, the only support you need is with accommodation” (ie the young person does not have any other needs despite being a child)

→ **All incorrect**

What needs to change

- 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, regardless of which legislation they are housed under, should be regulated and inspected by Ofsted.
- Children should be provided with independent advocacy about their housing options.
- Resources for local authorities to fulfil their statutory duties
- Changes to statutory joint guidance:
 - Section 20 as default position
 - New status of 'vulnerable 16 or 17 year old' – with more flexibility but same entitlements



Any Questions?

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