

**Article 39**

# ADVOCACY CLINIC

*Accommodation for children aged 16 and 17 who are in care*

Wednesday 22 February 2023, 2-4pm on Zoom

For members of Children and Young People's Advocates Network

## The Children Act 1989 guidance and regulations Volume 2: care planning, placement and case review

*The child's views...should always be discussed, recorded and given due consideration before a placement decision is made, at every review meeting and at case conferences.*

Paragraph 1.13 (page 11)

*...at the heart of effective corporate parenting...ensuring that a child or young person is provided with accommodation which meets his/her needs;*

Paragraph 1.3 (page 8)

*In every case, before making an 'other arrangements' placement in these settings the responsible authority must establish that the accommodation is suitable.*

Paragraph 3.126 (page 74)

*The responsible authority must ensure that, as far as reasonably practicable, the placement...does not disrupt his/her education...*

Paragraph 3.5 (page 48)

*The property must be 'habitable' – i.e. structurally sound, free from damp and in an adequate state of repair.*

Paragraph 3.129 (page 75)

## Statutory duties!

Primary legislation

Secondary legislation  
(& statutory guidance)

- Wishes & feelings
- Safeguarding & promoting welfare
- Needs: education, family, health

## ✓ **Human rights duties**

(*Human Rights Act, Cafcass, IROs*)

## ✓ **Equality duties**

(*protected characteristics*)

Children Act 1989  
complaints –  
**freezing decisions**

## KEY MESSAGES:

1. The use of semi-independent and independent accommodation ('supported accommodation') for 16- & 17-year-olds is becoming more prevalent (37% of this age group), but this doesn't mean it is required by law or that the law cannot come to the assistance of individual children.
2. All of the legal protections and rights pertaining to looked after children apply equally to 16- and 17-year-olds apart from the changes that were introduced through The Care Planning, Placement and Case Review (England) (Amendment) Regulations 2021. (These 2021 Regulations amended The Care Planning, Placement and Case Review (England) Regulations 2010).
3. When challenged about the 2021 changes, government consistently reiterates that local authorities must make care planning and placement decisions that are right for each individual child. This makes the work of advocates even more important and underlines the importance of advocates working with independent reviewing officers to use their statutory powers to refer material breaches to Cafcass.

# KEY LEGISLATION AND GUIDANCE

## PRIMARY LEGISLATION

- [Children Act 1989](#)
- [Human Rights Act 1998](#)
- [Equality Act 2010](#)

## SECONDARY LEGISLATION

- [The Care Planning Placement and Case Review \(England\) Regulations 2010 \(as amended\)](#)

## GUIDANCE

- [The Children Act 1989 guidance and regulations Volume 2: care planning, placement and case review](#) (last updated 8 July 2021) (\*statutory guidance)
- [Practice Guidance: Placements in unregistered children's homes in England or unregistered care home services in Wales](#) (\*guidance issued by Sir Andrew McFarlane, President of the Family Division)

# BECOMING LOOKED-AFTER – LEGAL FRAMEWORK

## CARE ORDER / INTERIM CARE ORDER

Section 31 / 38 of the Children Act 1989

- Child under the age of 17 (or 16 if married)

## VOLUNTARY ACCOMMODATION OF A CHILD IN NEED

Section 20 of the Children Act 1989

- Only with the agreement of all persons with parental responsibility
- BUT children aged 16 and 17 can consent themselves to being accommodated – agreement of parent/s not required (see section 20(11))

## FOLLOWING A CRIMINAL JUSTICE DECISION

Becomes looked after under section 21 of the Children Act 1989

'Treated as' looked after

**PACE detention** (detention in police custody after charge)

**Community sentence**

**Remand to local authority accommodation**

**Remand to youth detention accommodation**

Section 38(6) of the Police and Criminal Evidence Act 1984

Youth Rehabilitation Order with local authority residence requirement or fostering

Section 92 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012

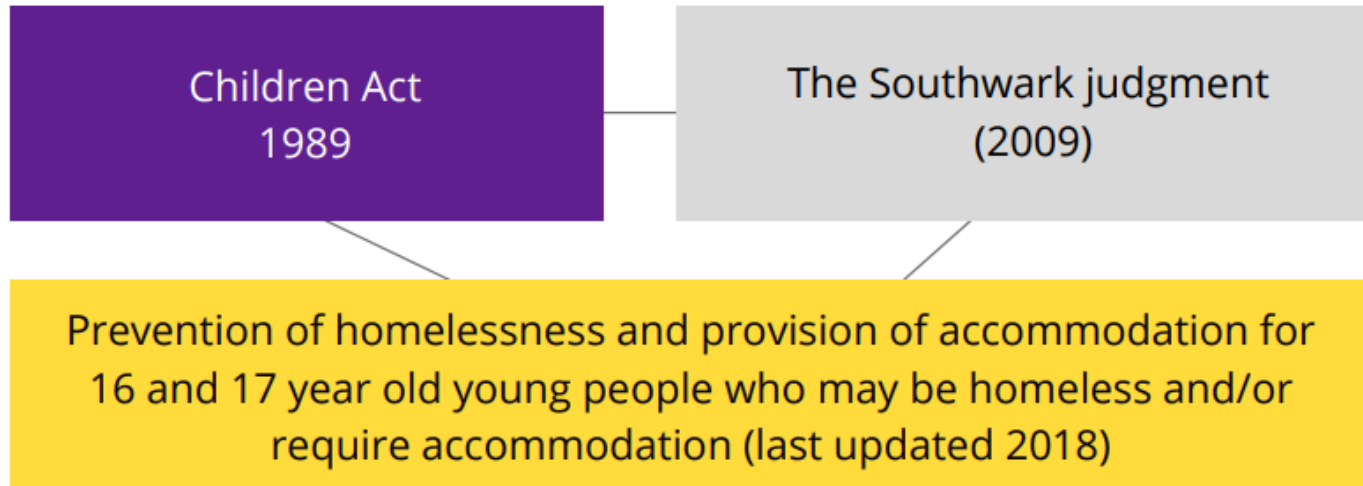
Section 104 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012

# LOOKED AFTER CHILDREN – THE SOUTHWARK JUDGMENT (2009)

The landmark Southwark judgment (2009) clarified and reaffirmed local authority duties towards homeless 16 and 17-year-olds. The judgment:

- Held that where a duty under section 20 of the Children Act arises, it takes precedence over the duties set out in the Housing Act 1996; and
- Confirmed the primacy of the specific duty under section 20 over the general duty under section 17 of the Children Act 1989.

This judgment informed a revised version of the statutory guidance that must be followed by local authorities.



*“Section 20 involves an evaluative judgement on some matters but **not a discretion.**”*

Read our [law map](#) on this topic to learn more

# LOCAL AUTHORITY STATUTORY DUTIES

## Section 22 of the Children Act 1989 - general duty of local authorities in relation to children looked after by them

- Safeguard and promote the child's welfare – section 22(3)(a)
- Duty to promote the child's educational achievement – section 22(3A)
- Ascertain and give due consideration to the wishes and feelings of the child – section 22(4)(a), 22(5)(a)

# LOCAL AUTHORITY STATUTORY DUTIES continued

## Section 22C of the Children Act 1989 – ways in which looked after children are to be accommodated and maintained

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

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

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

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

(d) if the child is disabled, the accommodation provided is suitable to the child's particular needs (section 22C(8)(a)-(d)).

(9) The placement **must be such that** the child is provided with accommodation within the local authority's area (\*unless this is not reasonably practicable, see section 22C(7)(c)).



# LOCAL AUTHORITY STATUTORY DUTIES continued

## Section 1 of the Children and Social Work Act 2017 – corporate parenting principles

A local authority in England **must**, in carrying out functions in relation to the children in care and care leavers **have regard** to the need—

- (a) to act in the best interests, and promote the physical and mental health and well-being, of those children and young people;
- (b) to encourage those children and young people to express their views, wishes and feelings;
- (c) to take into account the views, wishes and feelings of those children and young people;
- (d) to help those children and young people gain access to, and make the best use of, services provided by the local authority and its relevant partners;
- (e) to promote high aspirations, and seek to secure the best outcomes, for those children and young people;
- (f) for those children and young people to be safe, and for stability in their home lives, relationships and education or work;
- (g) to prepare those children and young people for adulthood and independent living.

# LOCAL AUTHORITY STATUTORY DUTIES continued

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

- **Regulation 5(e) (preparation and content of the care plan):** the child's wishes and feelings about where they live (or are to live) must be expressly contained within their care plan.
- **Regulation 9 (placement plan):** before placing a child in accommodation, the local authority must prepare a placement plan setting out how the placement will help meet the child's needs, ascertain and have regard to the child's wishes and feelings, and ensure the IRO has been informed (\*see Schedule 2 for matters "to be dealt with" in the placement plan).
- **Regulation 10 (avoidance of disruption in education)**
- **Regulation 14 (termination of placement by the responsible authority):** may only terminate a child's placement following a review of their case (\*see Part 6 for how to carry out the review) and must inform the child's IRO.

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

### Regulation 45(3) (additional functions of independent reviewing officers/ IROs):

- **Unique power** to refer failures by the local authority to fulfil its statutory duties to the Children and Family Court Advisory and Support Service (Cafcass) (\*see section 25B(3) of the Children Act 1989).
- Cafcass then has legal powers to bring proceedings on behalf of children in care, including under the Human Rights Act 1998 (\*see regulation 3 of The Children and Family Court Advisory and Support Service (Reviewed Case Referral) Regulations 2004).

Visit [rights4children](https://rights4children.org.uk) to learn more about independent reviewing officers



# TYPES OF ACCOMMODATION FOR 16- & 17-YEAR-OLDS IN CARE

## Section 22C of the Children Act 1989

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

### Parent

Or person with PR/  
named in child  
arrangement order

Section 22C(3)-(4)

### Foster parent

Section 22C(6)(a)-(b)

**Note** the priority  
given to family or  
friends becoming  
foster parents

### Registered children's homes

Section 22C(6)(c)

#### Legal framework:

- Care Standards Act 2000
- The Children's Homes (England) Regulations 2015
- Guide to The Children's Homes Regulations including The Quality Standards

### Other arrangements

Section 22C(6)(d)

\*Also referred to as:

- Semi-independent, independent and/or unregulated
- New terminology: 'supported accommodation undertakings' and 'supported accommodation'

**Note** that new regulation 27A of The Care Planning, Placement and Case Review (England) Regulations 2010 (inserted by the 2021 Regulations) lists the 'other arrangements' which are permissible for children aged 15 and under. For children aged 16 & 17, no such (legal) boundaries have been set.

# THE CARE PLANNING, PLACEMENT AND CASE REVIEW (ENGLAND) (AMENDMENT) REGULATIONS 2021 – CHILDREN AGED 15 AND UNDER

- Have the effect of prohibiting local authorities from placing looked after children who are **aged 15 and under** in any setting which is not regulated and does not provide care
- Set out the permissible ‘other arrangements’ under **section 22C(6)(c)** for looked after children **aged 15 and under**:
  - (i) a care home,
  - (ii) a hospital,
  - (iii) a residential family centre,
  - (iv) a school providing accommodation that is not registered as a children’s home,
  - (v) an establishment that provides care and accommodation for children as a holiday scheme for disabled children

# LOCAL AUTHORITY STATUTORY DUTIES – ‘OTHER ARRANGEMENTS’

## Section 22D(1) of the Children Act 1989

- **Duty to review a child's case prior to a move to a placement falling within ‘other arrangements’** under 22C(6)(d) (\*unless satisfied that it is necessary and urgent to do so to safeguard the child’s welfare, section 22D(2));
- The review must be carried out in accordance with The Care Planning, Placement and Case Review (England) Regulations 2010; IROs’ statutory powers are applicable (\*see regulation 45(3)).

## Regulation 27 of The Care Planning, Placement And Case Review (England) Regulations 2010

- **Before placing a child in ‘other arrangements’** under section 22C(6)(d), the local authority must be satisfied that the accommodation is suitable for the child (having regard to Schedule 6), arrange for the child to visit the accommodation (unless it is not reasonably practicable), and inform the child’s independent reviewing officer.

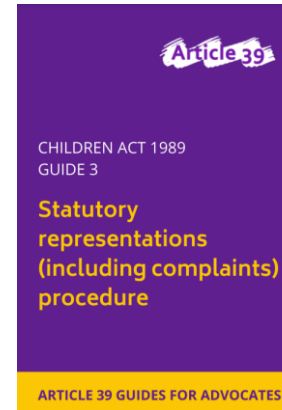
# FURTHER RESOURCES

## Children's rights legal digest:

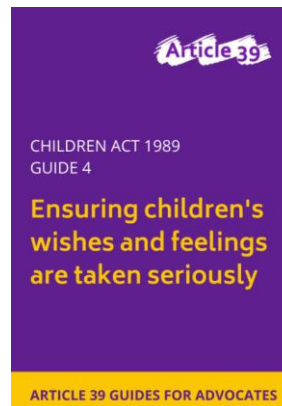
- [‘The Southwark judgment’ and the rights of homeless 16 and 17-year-olds](#) (House of Lords judgment)
- [‘Other arrangements’ \(unregulated accommodation\) for children in care](#) (Article 39 judicial review)
- [Duties towards unaccompanied children whose age is uncertain](#) (High Court judgment)



Your independent reviewing officer –  
[resources for children and young people](#)



[Statutory representations \(including complaints\) procedure – a guide for advocates](#)



[Ensuring children's wishes and feelings are taken seriously – a guide for advocates](#)



[Equality Act 2010 – a guide for advocates](#)



[Supporting homeless children aged 16 and 17 – law map](#)

# CASE STUDY DISCUSSION



# CASE STUDY 1, Angela

- Angela has just turned 17. She has been in care since she was a toddler. For the past three years, Angela has lived in the same children's home. Things have sometimes been rough for her during this time – she's had six different social workers and she doesn't get along with her current one, and she's only recently felt confident enough to go to college part-time (after many years of difficulties in various schools).
- Angela is finally feeling settled and happy. She's made friends inside and outside her children's home and she's a member of the local girls' rugby team. She's also been seeing a therapist, has grown in confidence and feels her independent reviewing officer has her back.
- Angela calls you in tears. She has just been informed by her social worker that she will be moving to semi-independent accommodation in a matter of weeks. The social worker says it's an important step in preparing her for "a successful transition to adulthood and independence". Angela is terrified about the prospect of moving and asks for your help to stop the move.

# Case Study 1

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22 February 2023

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# Legal analysis

- Children Act 1989 – s 22C (5) and (6) and (8)
- Children Act 1989 – s 22D
- The Care Planning, Placement and Case Review (England) Regulations – reg 10, reg 27 and schedule 6
- Statutory guidance – The CA 1989 guidance and regulations, Volume 2: Care planning, placement and case review
- Children Act 2004 – s 11

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## CASE STUDY 2, Bilal

- Bilal is 15 and he is an unaccompanied asylum-seeking child. He is looked after under section 20 of the Children Act 1989. Bilal arrived in England from Afghanistan when he was 14 years old. His age was disputed when he first arrived in the UK; he was assessed as being at least 17, and placed in a shared house with five other asylum-seeking teenagers.
- Bilal is unhappy living here. The property is in severe disrepair with mould all over his room. He feels lonely a lot of the time because the other teenagers are all from the same country, and they can speak together in their own language.
- As his advocate, you have been supporting Bilal to get children's social care to help with resolving the mould problem and they keep telling him to be patient and grateful. Two weeks ago, Bilal's social worker told him that he has been assessed as being under 16. Bilal is very frustrated that he has heard nothing since. He thought he was going to move to live with a foster family, but thinks he's been forgotten.

# ARTICLE 39 UPDATE

Carolyn Willow, Article 39 Director

# WHAT CHILDREN HAVE TOLD US

“When you are in semi-independent living you need someone to keep you in line. You don’t have parents telling you off when you do stupid stuff that teenagers all do. You don’t get it explained to you why it’s stupid and why you should stop. **If you haven’t got parents looking out for you, you just carry on being stupid. You also can get groomed and fall for things that you wouldn’t if you had caring adults in your life.**”

“There’s a lot expected of you when you’re 16 to 18. **It’s not easy when you haven’t got parents or siblings or sometimes even friends.** They should step back and think how we feel.”

# ARTICLE 39'S DISCRIMINATION CLAIM

## STATUTORY INSTRUMENTS

**2021 No. 161**

CHILDREN AND YOUNG PERSONS, ENGLAND

### The Care Planning, Placement and Case Review (England) (Amendment) Regulations 2021

<i>Made</i>	<i>18th February 2021</i>
<i>Laid before Parliament</i>	<i>19th February 2021</i>
<i>Coming into force</i>	<i>9th September 2021</i>

The Secretary of State makes these Regulations, in exercise of the powers conferred by sections 22C(11) and 104(4) of the Children Act 1989(1):

#### Citation and Commencement

1. These Regulations may be cited as the Care Planning, Placement and Case Review (England) (Amendment) Regulations 2021 and come into force on 9th September 2021.

1. The Regulations irrationally discriminate between children aged 15 and under and those aged 16 and 17.
2. The Regulations fail to have regard to specified equality needs. They discriminate against 16- and 17-year-olds on the basis of their age, and they disproportionately impact upon boys and children from black, Asian and minority ethnic communities (who make up over half of children in unregulated placements, despite comprising 26% of the care population).
3. Although the government did carry out a consultation, this was unfair as its focus was the provision of care for under 16s only.



# LATEST CONSULTATION ON 'SUPPORTED ACCOMMODATION'

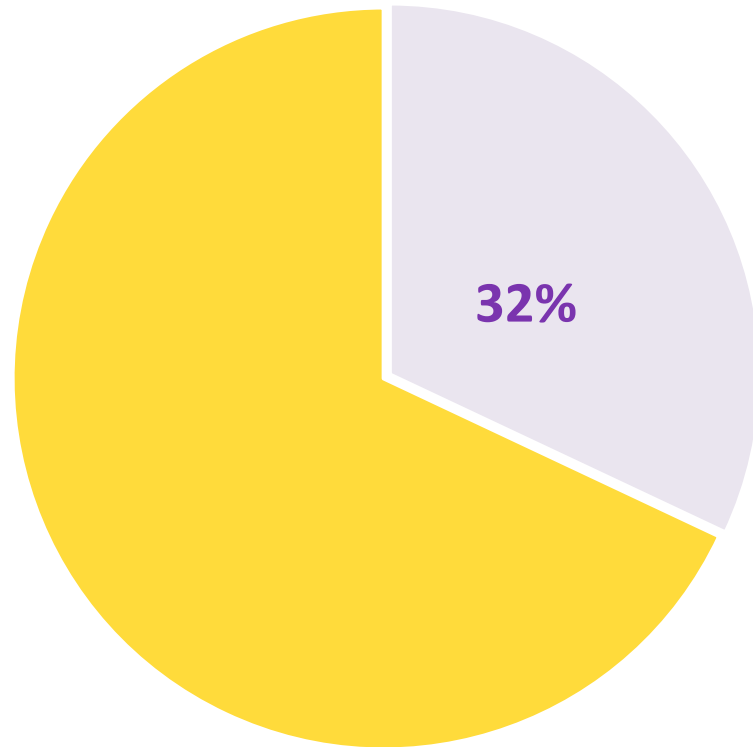
## The Department for Education's December 2022 consultation proposed:

Applies directly to 16 and 17 year-olds who are looked after (though affecting younger children too)

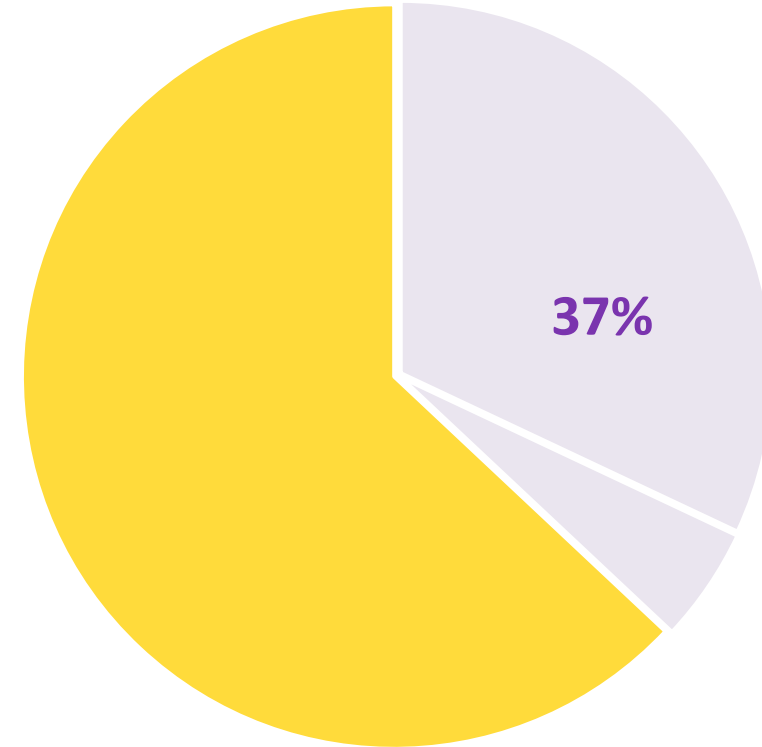
- Four mandatory national standards for supported accommodation undertakings ('care-less standards').
- Bedsits, caravans, boats, shared houses and hostels to become registered 'care' placements for first time.
- Supported lodgings to become registered 'care' placements for first time.
- Three-yearly Ofsted inspections of a sample of supported accommodation owned/run by each provider.

# CHILDREN AGED 16 AND 17 LIVING IN CARE-LESS SETTINGS

March 2021



March 2022



- Proportion of looked after children aged 16 and 17 living in care-less settings

# CONSULTATION ON 'SUPPORTED ACCOMMODATION'

## Four categories of 'supported accommodation for young people'

1. Single occupancy – including bedsits and flats.

2. Shared accommodation/group living for looked after children (aged 16 and 17) and adults who were formerly in care.

3. Shared accommodation/group living for looked after children (aged 16 and 17) and adults who were not formerly in care.

4. Family-based accommodation/supported lodgings for looked after children aged 16 and 17.

## Mobile and 'non-permanent settings'

- Mobile and 'non-permanent settings' such as caravans, barges and boats may be registered as a form of supported accommodation for looked after children aged 16 and 17.
- "In some limited and exceptional circumstances this type of provision might be the right option for young people."
- The following accommodation would be **very unlikely** to meet the new standards for supported accommodation: **"Provision which is not appropriately secure, isolates young people and is located such that a young person cannot access local services such as education and health"**.

# CONSULTATION ON 'SUPPORTED ACCOMMODATION'

## Proposed timeline:



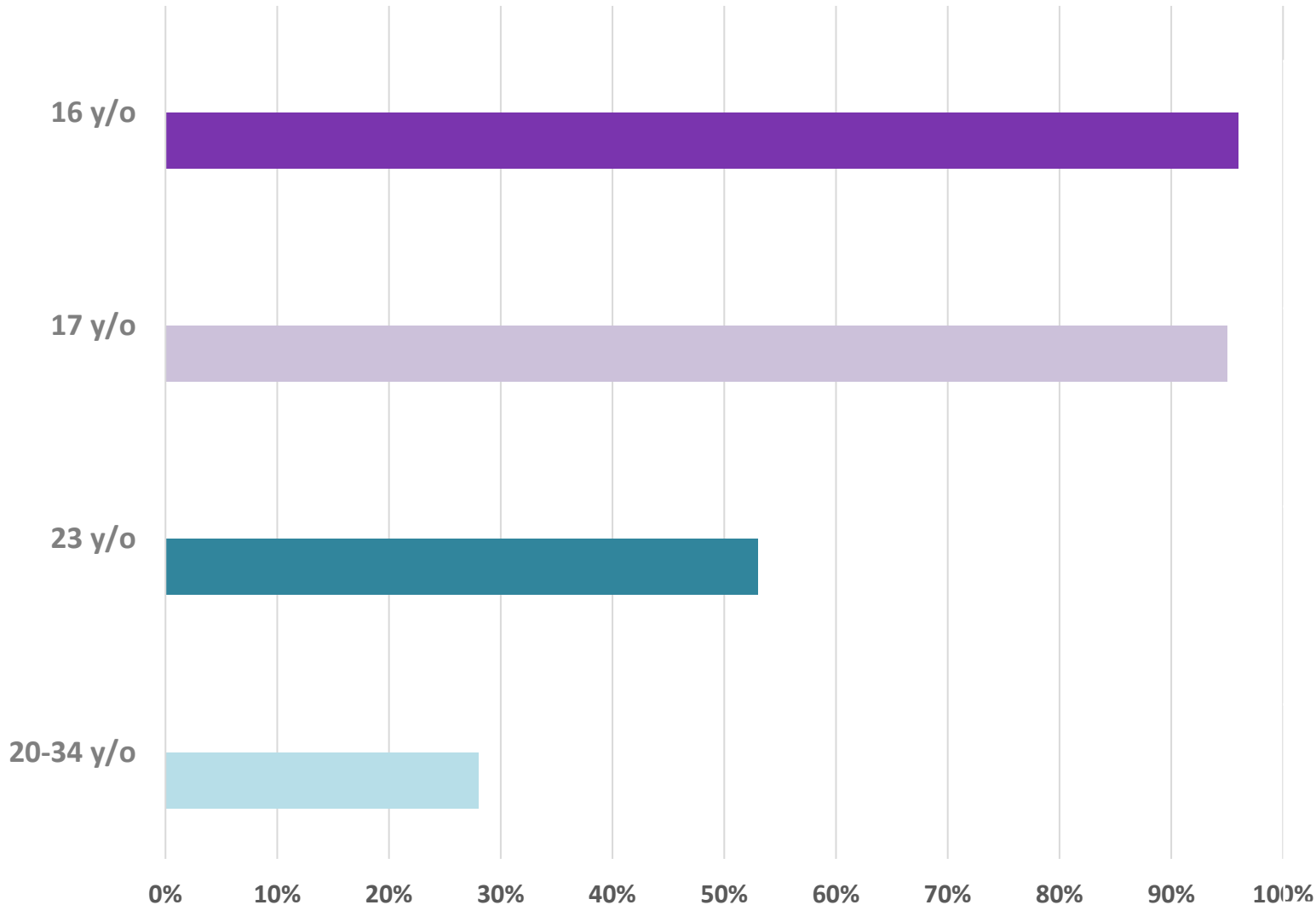
**Spring 2023** – Ofsted to begin registering providers

**October 2023** – Registration mandatory

**October 2023** - Local authorities no longer permitted to use accommodation that is not registered with Ofsted, or the provider has not submitted completed application

**April 2024** – Ofsted to begin inspecting registered providers

# CHILDREN AND YOUNG ADULTS LIVING WITH PARENTS



- **95%** of children aged 16 lived with their parent or parents.
- **96%** of children aged 17 lived with their parent or parents.
- **53%** (over half) of adults aged 23 lived with their parent or parents.
- **28%** of adults in the general population aged between 20 and 34 years lived with their parent or parents.

**#KeepCaringTo18**



Support our campaign to make it law that every looked after child receives care until at least their 18th birthday.

Visit:

<https://article39.org.uk/keepcaringforchildrenupto18/>

# ON YOUR SIDE: CHILDREN'S RIGHTS ADVICE SERVICE



**Straightforward information about the law** to help children and young people in England. This includes children and young people who are in the care of an English local authority but live in Scotland or Wales.

Visit: [article39.org.uk/on-your-side/](https://article39.org.uk/on-your-side/)

