ADVOCACY CLINIC

The rights of children aged 16 and 17 who are without a home and parental care

Monday 23 September 2024, 11am-1pm on Zoom

For members of Children and Young People's Advocates Network

OVERVIEW OF THE LAW – OUTLINE

- How children become looked after
- Section 20 Children Act 1989
- What do we mean by children in need
- Statutory guidance: importance of advocacy
- Southwark judgment

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DEFINITION OF A CHILD

Children Act 1989 (section 105)	United Nations Convention on the Rights of the Child (article 1)
"child" means, subject to paragraph 16 of Schedule 1, a person under the age of eighteen.	a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

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CHILDREN WHO ARE LOOKED AFTER

- Children who are the subject of a **care order** or an **interim care order** (sections 31 and 38 Children Act 1989)

- Children who are **accommodated** (section 20 Children Act 1989)

- Children who are **remanded in youth detention accommodation** (section 104 Legal Aid, Sentencing and Punishment of Offenders Act 2012)

- Children who have been taken into **police protection** or **remanded to accommodation provided by or for the local authority** or subject to a **residence requirement** (section 21 Children Act 1989)

- Children who are **placed for adoption**, or **authorised to be placed for adoption**, by a local authority (section 18(3) Adoption and Children Act 2002)

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CARE ORDER

Section 31(2) Children Act 1989

A court may only make a care order or supervision order if it is satisfied—

(a) that the child concerned is suffering, or is likely to suffer, significant harm; **and**

(b) that the harm, or likelihood of harm, is attributable to—

(i) the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him; **or**

(ii) the child's being beyond parental control.

Section 31(3) Children Act 1989

No care order or supervision order may be made with respect to a child who has reached the age of seventeen (or sixteen, in the case of a child who is married).

Please note: The **Marriage and Civil Partnership (Minimum Age) Act 2022** increased the minimum age for marriage and civil partnership to age 18, thereby making the above reference to marriage redundant.

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ACCOMMODATED UNDER SECTION 20

- Voluntary nature of section 20 accommodation
- Duty to ascertain and give due consideration to child's wishes and feelings
- Ways in which children are to be accommodated and maintained (looked after)

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ACCOMMODATED UNDER SECTION 20 – VOLUNTARY NATURE

Section 20(7) Children Act 1989

A local authority may not provide accommodation under this section for any child if any person who—

(a) has parental responsibility for him; and

(b) is willing and able to—

(i) provide accommodation for him; or

(ii) arrange for accommodation to be provided for him,

objects.

Section 20(8) Children Act 1989

Any person who has parental responsibility for a child may at any time remove the child from accommodation provided by or on behalf of the local authority under this section.

Section 20(11) Children Act 1989

Subsections (7) and (8) do not apply where a child who has reached the age of sixteen agrees to being provided with accommodation under this section.

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ACCOMMODATED UNDER SECTION 20 – WISHES AND FEELINGS

Section 20(6) Children Act 1989

Before providing accommodation under this section, a local authority shall, so far as is reasonably practicable and consistent with the child's welfare—

(a) ascertain the child's wishes and feelings regarding the provision of accommodation; **and**

(b) give due consideration (having regard to his age and understanding) to such wishes and feelings of the child as they have been able to ascertain.

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WAYS IN WHICH CHILDREN ARE TO BE LOOKED AFTER

Section 22C Children Act 1989

- Parents or others with parental responsibility or others where a family court has previously made an order
- Family or friends foster carers
- Foster carers not previously known by the child
- Children's home
- 'Other arrangements' (supported accommodation permissible for children aged 16 and 17, but not those aged 15 and under)

- Near to child's home
- Education or training not disrupted
- Brothers and sisters live together
- If child is disabled, home (placement) is suitable for their needs

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ACCOMMODATED UNDER SECTION 20

- Section 20(1) Children Act 1989 ➢ **Shall / must**
- Section 20(3) Children Act 1989 ➢ **Shall / must**
- Section 20(4) Children Act 1989 ➢ **May**
- Section 20(5) Children Act 1989 ➢ **May**

Section 20 Children Act 1989: https://www.legislation.gov.uk/ukpga/1989/41/section/20

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DUTY TO ACCOMMODATE UNDER SECTION 20

Section 20(1) Children Act 1989

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.

Section 20(3) Children Act 1989

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 him with accommodation.

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POWER TO ACCOMMODATE UNDER SECTION 20

Section 20(4) Children Act 1989

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

Section 20(5) Children Act 1989

A local authority may provide accommodation for any person who has reached the age of sixteen but is under twenty-one in any community home which takes children who have reached the age of sixteen if they consider that to do so would safeguard or promote his welfare.

Community home – homes provided for the care and accommodation of children run by local authorities or voluntary organisations

(section 53 Children Act 1989)

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Section 20(1)	Section 20(3)	Section 20(4)	Section 20(5)
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.	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 him with accommodation.	A local authority **may** provide accommodation for any child within their area (even though a person who has parental responsibility for him is able to provide him with accommodation) if they consider that to do so would safeguard or promote the child's welfare.	A local authority **may** provide accommodation for any person who has reached the age of sixteen but is under twenty-one in any community home which takes children who have reached the age of sixteen if they consider that to do so would safeguard or promote his welfare.

Sections 20(1) & 20(3)

– the must duties –

relate to CHILDREN IN NEED

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CHILDREN IN NEED

Section 17(10) Children Act 1989

For the purposes of this Part a child shall be taken to be 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,

and "family", in relation to such a child, includes any person who has parental responsibility for the child and any other person with whom he has been living.

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CHILDREN IN NEED

Section 17(11) Children Act 1989

For the purposes of this Part, a child is disabled if he is blind, deaf or dumb or suffers from mental disorder of any kind or is substantially and permanently handicapped by illness, injury or congenital deformity or such other disability as may be prescribed; and in this Part—

“development” means physical, intellectual, emotional, social or behavioural development; and

“health” means physical or mental health.

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STATUTORY GUIDANCE

There are only two circumstances in which a local authority might find that a homeless [16 or 17 year-old] 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:

a. not a child in need;

b. 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.

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* (last updated 2018)

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IMPORTANCE OF ADVOCACY

Children and young people who have received services under the 1989 Act are able to be supported to make complaints and representation with the help of an independent advocate. Children's services should provide information about access to advocacy services when they explain the assessment process to 16 and 17 year olds seeking help because of homelessness. **Para 3.46**

Young people should have access to independent advocacy and support to assist them in weighing up the advantages and disadvantages and coming to a balanced decision and understanding and navigating the housing system. Independent advocacy and support services can play a key role in supporting 16 and 17 year olds who are homeless or threatened with homelessness. **Para 3.47**

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* (last updated 2018)

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IMPORTANCE OF ADVOCACY

Where a 16 or 17 year old child in need wishes to refuse accommodation offered under section 20 of the 1989 Act, children's services must be satisfied that the young person:

a) has been provided with all relevant information;
b) is competent to make such a decision; **and**
c) that they do not need to take additional safeguarding action.

Para 3.49

At any time, child can revisit their decision and ask to be looked after

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* (last updated 2018)

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SOUTHWARK JUDGMENT – HOUSE OF LORDS – 2009

Summary

- ‘G’ came to the UK with his mother and siblings when he was 8 years old (in 1998).
- In June 2007, G’s mother told him to leave the family home. He was then aged 17. He asked housing for help.
- In September 2007, G obtained advice from solicitors.
- G’s local authority – the London Borough of Southwark – refused to accommodate him under section 20. The local authority arranged homelessness accommodation.
- In the judicial review, G argued that the section 20(1) duty to accommodate him had arisen, and he had therefore been provided with accommodation under section 20(1). Conversely, the local authority said his accommodation was arranged under the Housing Act 1996.
- **G’s appeal was allowed (May 2009) – court found he had been accommodated under section 20(1). Now, he was entitled to a wide range of support as a care leaver.**

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RECAP – 1

- If a child in need requires accommodation due to there being no-one with parental responsibility for them, them being lost or abandoned, or the person who has been caring for them being prevented from providing suitable accommodation or care, **then the section 20(1) duty arises**.
- If a local authority considers that the welfare of a child in need aged 16 or 17 is likely to be seriously prejudiced if the local authority does not provide accommodation, **then the section 20(3) duty arises.**
- A local authority has the power to accommodate a child if it considers that doing so would safeguard or promote the child's welfare – section 20(4). It also has the power to accommodate a person aged 16-20 years in a community home if it considers that doing so would safeguard or promote their welfare – section 20(5).
- **Duties under section 20(1) and 20(3) cannot be substituted by provision of accommodation under section 17 or under the Housing Act 1996.**

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RECAP – 2

- Children should be given full information about their rights and the implications of different options, so they can weigh them up carefully.
- Access to independent advocacy in these circumstances is vital**.**
- Placement decision-making follows the individual child's needs, irrespective of their age.
- The onus is not on the child to determine whether section 20(1) or 20(3) duties apply.
- Where the section 20(1) duty does apply, a fully informed child with capacity to make a choice **might** decide not to be accommodated. They can revisit this decision at any time up to the age of 18.
- Local authority child protection duties apply up to age 18. When section 20(3) applies, local authorities cannot rely on a child refusing to be accommodated to justify inaction.
- Local authority **current and past** failures can be legally challenged.

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RESOURCES TO SUPPORT YOU

RESOURCES FOR YOUNG PEOPLE

Aged 16 or 17 and without a home

It can be very lonely, stressful and frightening having to leave home at 16 or 17. Help is available. The law in England is very clear that 16 and 17 year-olds have the right to help and protection – both while they are still legally children, and into their adult lives.

You can find information about your right to a home and to be cared for on rights4children.

RESOURCES FOR ADVOCATES AND OTHER PROFESSIONALS FIGHTING FOR CHILDREN'S RIGHTS

LAW MAP: The rights of children aged 16 and 17 who are homeless and without parental care

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The rights of children aged 16 and 17 who are without a home and parental care

Our 'law maps' offer bite-sized, accessible information about the law in the context of specific situations. This law map breaks down the key, relevant provisions of the Children Act 1989, and summarises the key messages from the landmark *Southwark* judgment. In it, you will also find a summary of the key fragments of the statutory guidance relating to children aged 16 and 17 who are without a home and parental care and more. We hope this resource will help you defend the rights of children in these circumstances more effectively.

The *Southwark* judgment

The landmark 2009 (House of Lords) *Southwark* judgment clarified and reaffirmed local authority duties towards children aged 16 and 17 who are homeless and without parental care. The judgment held that where a duty under section 20 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 (published in 2010 and last updated in 2018).

Visit:
https://article39.org.uk/resources-for-advocates/the-rights-of-children-aged-16-and-17-who-are-without-a-home-and-parental-care/

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CASE STUDY ANALYSIS

Scenario 1 - Toni

Toni is 17 years old, and due to turn 18 in eight weeks. She lived with her mother, grandmother and brother, until she was arrested for a burglary. She was remanded in custody for one week until she was placed in homeless persons' accommodation by her local authority.

Toni's home life has been difficult over the years. A referral was made a couple of years ago from her school to children's services because of concerns about her missing school, difficulties managing her anger towards teachers and other students, and low self-esteem. Toni recalls speaking to a social worker but cannot remember what happened. She describes an unhappy family life and often feels anxious. Her mother has now said that Toni cannot return to the family home.

Toni has four GCSEs and wants to go to college to study computer coding, IT and business studies. She thinks she might like to go to university but is very worried about how she can afford it.

Toni has been informed that the charges have been dropped. Her housing officer has told her that she has been found to have made herself intentionally homeless because she got into trouble with the police, and she needs to leave the hostel in a week.

Toni was referred to the local advocacy service by her youth offending team worker.

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Toni's situation – analysis and next steps

- Is there a difference between being provided accommodation by the homeless team, rather than children's services?
- Does Toni meet the criteria to be looked after? -> **SOUTHWARK JUDGMENT TEST**:

- Is the person a child?
- Is the person a child in need? (as defined in Section 17 of the Children Act 1989)
- Is the child within the local authority's area?
- Does the child appear to require accommodation?
- Is the need for accommodation the result of:

  (a) there being no person who has parental responsibility for the child;

  (b) the child being lost or abandoned; or

  (c) the person who has been caring for the child being prevented from providing them with suitable accommodation or care.

- What are the child's wishes and feelings regarding the provision of accommodation? (s.20(6) Children Act 1989)
- What consideration (having regard to his/her age and understanding) should be given to those wishes and feelings?

- In what ways might Toni be described as vulnerable?
- What could Toni expect as a looked after child – both now, and into the future?

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Scenario 2 - George

George is 16 years old. He lived with his mother, a Moroccan national, who was deported when George was 7 years old. He is not sure why or how, but he then went to live with his uncle in a one-bedroom flat with his partner and their baby. He was left alone or with his uncle's partner for lengthy periods and felt isolated and unwanted. George feels his uncle's partner never really wanted him to join their family. He has an older brother who he hasn't seen for five years.

George ran away from his uncle's home and has been 'sofa-surfing' with friends for the last two months. The mother of his best friend has been doing her best to provide support and to get help from children's services. She has been told by the duty social worker that George is the responsibility of his uncle and that he should go home. The social worker told her that as George is a foreign national, he has no right to support from children's services.

George's school reports demonstrate he has significant ability and should be sitting 8 GCSEs next year with expected good results. George thinks he would like to stay at his school sixth form and may even go to university.

George's friend's mother cannot afford to support George who needs help around keeping in touch with his family, support at school and his further education, and settling his immigration status. She is concerned about the approach taken by the social worker and whether there is an element of racial discrimination.

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George's situation – analysis and next steps

- Does the Children Act 1989 provide rights and protections for children not born within the UK?
- What is parental responsibility and in George's situation, who has parental responsibility for him?
- Should George go back to his uncle's, or be provided with accommodation by his local authority as a looked after child?
- In what ways might George be described as vulnerable?
- What could George expect if he was a looked after child – both now, and into the future?

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