

Buckinghamshire Joint Protocol For Homeless 16 and 17 year olds

Partners

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1. Introduction and Legal Background

This joint protocol establishes the roles and responsibilities of the four district housing departments and Buckinghamshire County Council in relation to homeless 16 and 17 year olds.

The protocol has been introduced in response to the House of Lords judgement in the case of (R)G v Southwark (2009). This judgement clarified the legal responsibilities of Children and Young People's Services towards homeless 16 and 17 year olds and the interrelationship between duties under the Children Act 1989 and homelessness legislation. It also seeks to prevent young people (16 & 17 years old) being passed from one agency to another without due care and attention to their needs.

Section 17 (10) of the Children Act 1989 states that a child in need is unlikely to achieve or maintain, or have opportunity to do so, a reasonable standard of health and/or development without the provision of on going support by a Children Services Authority. The Act also placed a duty on Children Services Authorities to provide accommodation for a child in need age 16 or over whose welfare is otherwise likely to be seriously prejudiced if they do not provide accommodation pursuant of section 20 of the Children Act 1989 (para 10.38 of the Homelessness Code of guidance). In conjunction with this the Homelessness (Priority Need for Accommodation) (England) Order 2002 and section 1 of the Homelessness Act 2002 specified an extension of the Priority Need category to include 16 and 17 years old children who are also "irrelevant" children (for the purposes of the Children Act 1989).

These two pieces of legislation brought about unintended confusion for both young people and front line staff in two tier local authorities as to who has responsibility for accommodating homeless 16 and 17 year olds. However, the need for collaborative working and co-operation has been clarified in law and in accompanying guidance. This legislation and guidance makes clear an expectation from central government that two tier local authorities will forge proactive links to ensure they can comply fully with the inter-relating pieces of legislation and prevent failures in responsibilities and standards of care.

This document defines the role of each authority in accordance with their statutory responsibilities, reaffirmed by case law as stated above, and creates an agreed and robust process aimed at finding workable solutions for homeless 16 and 17 year old young people.

2. Purpose of Joint Protocol

A Joint Protocol is required to ensure there;

- are arrangements to prevent youth homelessness and provide support to young people to remain living with their families.

- is information for agencies about where they should refer young people for help with homelessness.
- are arrangements for integrated or joint assessment processes where 16 and 17 year olds seek help because they are homeless, including information-sharing procedures.
- are agreed timescales for assessing whether or not a homeless young person is a child in need and will be provided with accommodation by children's services.
- are arrangements for timely assessment and placement provision for young people who require accommodation on release from custody.
- are arrangements for access to suitable emergency accommodation when needed.

The recognised benefits to having a joint protocol are;

- a better understanding of the roles and responsibilities of officers, agencies, and young people.
- a reduced risk of young people falling through the net and becoming at risk of exploitation and rough sleeping.
- improved working relationships between agencies.
- a reduced number of young people making homelessness approaches.
- young people access the most appropriate accommodation support services therefore preventing future homelessness and reducing the risk of becoming NEET.
- a reduction in use of inappropriate accommodation i.e. bed & breakfast.
- best use of limited resources and time.

3. Aims and Objectives

By working together the participants to this protocol aim to;

- enable children and young people to remain within their family wherever possible.
- provide young people with the care and support they need as individuals to achieve the best outcomes for them.
- treat young people safely and with respect, care and understanding.
- ensure young people have the right to freedom from abuse, neglect and hardship.
- ensure young people have equal access to services, which meet their individual needs, whatever their race, gender, religion, disability, sexuality, opinion or family background.
- ensure young people have their needs met, including their needs for housing, support warmth, food, education and leisure.
- ensure that young people in care make a successful transition to independent living.
- ensure young people are aware of their responsibilities with regard to their behaviour to abide by the rules and regulations governing accommodation provided.

- ensure young people are not subjected to numerous assessment processes and that they do not have to negotiate their own way through a range of agencies.

4. The Initial Response

The aim of the initial response to an approach for help by a 16 or 17 year old is to identify and meet the immediate needs of the young person, whilst ensuring they are engaged in an assessment process which will enable their longer term accommodation and support needs to be met.

Please note: If a homeless 16 or 17 year old presents out of hours they should be directed to the BCC's Children Services' Out Of Hours Team.

a) Initial approach to a non-local authority agency/organisation

If the agency approached for assistance is **not** a local authority a referral should be made in the first instance to Bucks County Council Children and Young People (BCC CYP) Services for a Child in Need assessment. This is because the Children Act 1989 takes precedence over the Housing Act 1996 (as established in R (G) v Southwark (2009)).

b) Initial accommodation and contact with parents/carers

Whether it is a district council or Bucks County Council that receives an initial approach or referral, the authority must take preliminary action to provide suitable temporary accommodation for the young person if he/she is homeless on the day.

Liaison should take place as soon as possible with the young person's parents or carers with parental responsibility. Parents should be requested to consider any alternative accommodation they can find for their child whilst an assessment is taking place. Whichever agency receives the initial contact, the parents should be contacted within 48 hours to explore mediation or reconciliation to prevent homelessness. The young person and their family should also be asked to consider whether alternative family members or friends may be able to accommodate the young person whilst an assessment is taking place. Mediation is arranged by BCC CYP Services.

c) Initial approach to a District Council

Where the initial approach is to a district council, the relevant Housing Service will undertake a preliminary investigation of the young person's housing circumstances. The preliminary investigation, which includes a home visit, is normally completed the same day (or the following working day if the young person approaches the Housing Service late in the afternoon). Whilst carrying out an interview, or during negotiations with a parent/carer for the young

person's potential return home, a housing advisor may have reason to believe that the young person has made the approach for reasons other than homelessness e.g. domestic violence, sexual abuse etc. If the young person refuses to return home, regardless of the reason, the Housing Service will provide suitable temporary accommodation and make a referral to BCC CYP Services for a Child and Family (C+F) assessment, stating all the reasons for the referral. This referral should be done using the Multi Agency referral form (MARF).

BCC CYP Services should carry out a Child and Family (C+F) assessment to assess whether the young person is a Child In Need (CIN) within seven working days from the date of the referral. If BCC require longer than seven working days to complete their enquiries, the relevant social worker should contact the Housing Service to discuss the progress of the assessment and to request an extension of the accommodation. The Housing Service will continue to provide accommodation whilst this assessment is being carried out. However, a time limit not exceeding four weeks to complete the assessment will apply. During the period of assessment BCC CYP services may consider whether, with further support from appropriate services, the young person could return home or to other family members.

If the young person is **threatened with homelessness**, and there are no indicators of other reasons for concern (as above), the Housing Adviser will attempt to prevent the young person from becoming homeless.

➤ **District Council's Assessment Process**

Whether dealing with an initial approach or a referral from BCC (due to the fact that the young person is not a Child In Need, or has refused help via the CIN route (see below)), the district council Housing Service will deal with the approach/referral as an application for assistance under Part 7 of the Housing Act 1996. The Housing Service will carry out a homelessness assessment of the young person as stated under part 7 section 184 of the Housing Act 1996 (as amended). If there is reason to believe that the young person is eligible for housing assistance, is homeless and in priority need, then suitable temporary accommodation will be provided by the Housing Services pursuant to section 188 of the Housing Act 1996 pending decision.

If it is established through investigation that the young person is eligible for assistance, homeless and in priority need (being 16 or 17 would satisfy this criteria), and if his/her homelessness was not brought about intentionally, the district council will have a duty to provide the young person with permanent accommodation under section 193 of the Housing Act 1996 (as amended) until the duty can be discharged. The Housing Service should seek BCC CYP Service's support for the young person if they believe that the young person is vulnerable and in need of support and cannot secure suitable accommodation with on-site support.

- **What if the young person is found not to be statutorily homeless?**

If a young person is found not to be statutorily homeless then the housing department has no duty to assist the young person.

If family relationships are not abusive but present a barrier to a return home, agencies are advised to refer the young person to other suitable support services to assist in the young person returning home.

- **What happens if the young person is found to be intentionally homeless?**

The Housing Service will fully record the actions taken and the information collated that led to the intentional decision. A referral under section 213 of the Housing Act 1996 will be made to BCC CYP Services.

BCC have responsibility to assist young people aged 16/17 who are homeless and found to be so intentionally.

The young person may choose to go through the homelessness review process under section 202 of the Housing Act 1996 followed by judicial review under section 204 of the same Act. The Housing Service may continue to provide temporary accommodation during section 202 review.

d) Initial approach to Bucks County Council

If the initial approach is made to Bucks County Council Children and Young People Service, they should also provide suitable temporary accommodation for the young person and carry out a Child and Family (C+F) assessment to establish BCC's responsibilities under the Children Act 1989.

BCC Children and Young People's Service Assessment Process

The Social Worker will assess whether the young person is a Child in Need (CIN) and determine whether any duty is owed under section 20 Children Act 1989 to provide the child with accommodation. When undertaking the assessment, the relevant social worker will consider whether, with appropriate support, the young person could return to their family or to friends.

If the young person is assessed as a CIN it is BCC's responsibility to accommodate them. The Social Worker will have a discussion with them about the implications of being accommodated by BCC's CYP and becoming 'looked after'. This will include comprehensive information about the services they will receive as a 'looked after' child and as a care leaver. The young person's views on becoming 'looked after' will be gained. In order to determine this, the young person will be offered the support of an independent advocacy service. Where the young person is accommodated under section 20 they will not be eligible for welfare benefits, including housing benefit and

BCC CYP will have a duty to maintain them (including meeting the cost of accommodation).

Should the young person refuse to be accommodated, a judgement will be made about their capacity to make this decision and whether they have been provided with all the necessary information to make an informed judgement about this.

- **What happens if the Young Person is found not to be a child in need?**

If the young person is not assessed as being a CIN or in need of accommodation under S20 Children Act 1989, or if the young person refuses help via the CIN/S20 route, BCC CYP Service must make a referral to the relevant district council Housing Service. The referral must include a copy of the C + F assessment.

5. Further Information on the Assessment Process

The two assessments ('Housing' and 'Children and Family') for the young person should be carried out separately. The assessments have their own distinctive format for gathering information about the young person's circumstances. As regards a housing assessment, for example, the legislation does not separate the criteria for an adults' homelessness assessment from a child's since it is based on the five criteria of the homelessness investigation process, i.e. eligibility, homelessness, priority-need, intentionality and local connection.

The rights of a young person in the family home (under the Housing Act) are very limited. The parent or guardian does not need a court order to evict or exclude them from the family. A housing officer is only required to carry out reasonable investigation (i.e. contacting the parent or guardian by phone or home visit) to establish homelessness, or carry out reasonable negotiation to prevent homelessness.

A Child and Family assessment, however, should be undertaken within the structure of The National Framework for Assessment of Children in Need and their Families. The Assessment Framework provides a systematic approach to gathering information about children who may be in need, e.g. assessing a child's development needs require information about his/her:

- Health
- Education
- Emotional & Behavioural Development
- Identity
- Family and Social relationships
- Social Presentation

- Self-care skills etc.

This assessment requires a specialist approach within a setting that is conducive for a young person to trust the assessor. A joint assessment may not achieve this. However, the relevant Housing Service and BCC CYP Services should discuss the assessment where necessary and be prepared to assist each other when required. In addition, copies of the assessment reports (both Housing and BCC CYP Services) must be shared between the two services.

A mutual obligation exists for local authorities (Housing and Children Services) to assist one another unless this is in conflict with their own statutory duty, as stated under section 27 of the Children Act 1989 and section 10 of the Children Act 2004.

6. Assessment Review

A number of events can trigger a review of the Assessments. Examples of possible events include (but are not limited to);

- The young person discharging themselves from local authority accommodation under Section 20 (Children Act 1989).
- A discharge of the Council's housing duty.
- The young person's failure to engage with the support offered.
- Changes in the young person's behaviour.
- Young person abandon temporary accommodation offered by Housing Service.

If such an event occurs then the relevant Housing Service and BCC CYP's Service will agree actions to safeguard the welfare of the young person. In line with the focus on prevention, the Lead Officers should continue to consider and provide, where possible, a chance for the young person to return home with the assistance of mediation and other relevant services. The aim of this will be to give the young person personal and practical life skills to avoid a family breakdown in the future.

If the Lead Officers in Housing and BCC CYP Services are unable to agree in respect of any referral, assessment, support package or accommodation provision, then the case should be escalated to Senior Managers within the respective organisations (for more on **Dispute Resolution** see below.)

7. Mediation

Where there is a dispute between the young person and his/her parent, BCC CYP Services will take the lead in advising other agencies whether mediation is a suitable approach for the young person. If mediation is recommended and the young person is prepared to participate, the authority that the young person initially approached can continue to provide accommodation pending

mediation. Mediation can be carried out by a variety of agencies within Buckinghamshire, recommended by BCC CYP.

Any preventative approach taken by BCC CYP Service and the relevant Housing Service, should be undertaken alongside the statutory assessment processes outlined by both sets of legislation (Housing and Children Acts). It should not prejudice or delay assessment or the delivery of statutory services to 16 and 17 year olds who may be homeless or at risk of homelessness. For example, if a child is provided with temporary accommodation while mediation is progressing, that accommodation should continue until a formal decision is reached in terms of housing. With regards to Social Care, BCC CYP Services should continue to provide accommodation and support until the dispute is resolved. Section 11 of the Children Act 2004 requires a range of agencies including county level and unitary authorities to make arrangements for ensuring that their functions are discharged having regard to the need to safeguard and promote the welfare of children.

8. Review of Protocol

This protocol will be reviewed six months after implementation and then annually after that to ensure that both the district councils and Bucks County Council are satisfied that it is operating in an effective and efficient manner.

9. Dispute Resolution

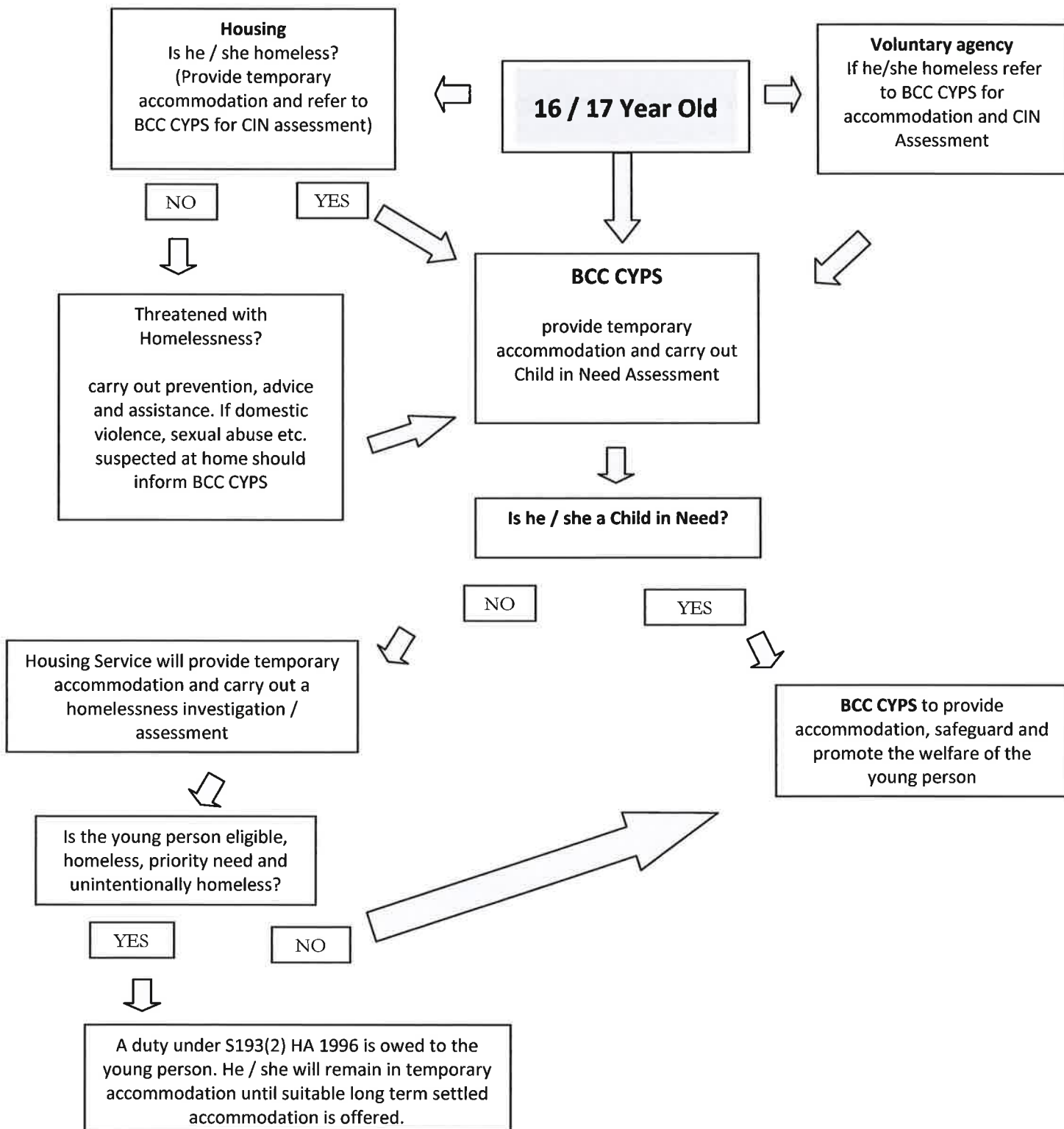
Where concerns arise over the handling of a case the relevant officer should in the first instance attempt to resolve the problem by contacting the officer in the counterpart service to make further enquiries. If these enquiries do not resolve the problem the matter should then be escalated to their line manager.

If this level of escalation does not resolve the matter;

- a) If the Housing Service has concerns about the implementation of the Protocol by BCC CYP, which cannot be resolved by the line managers, the matter can be escalated to the relevant Practice Improvement Manager for either the Child in Need or First Response Units depending on where the case is allocated. If this does not resolve the problem it will be escalated to Head of Service, either for the First Response Team or child in need units depending on where the case is allocated.
- b) If BCC CYP has concerns over the implementation of the Protocol by the Housing Service, which cannot be resolved by the line managers, the matter can be escalated to the relevant Service Manager.

Examples of issues that will trigger escalation include, but are not limited to, failure to adhere to the timescales agreed in this Protocol and inability for officers to agree over the outcome of assessments. With each level of escalation both services will endeavour to deal with the matter within 2 days.

10. Flowchart representing Joint Protocol for homeless 16/17 year olds



APPENDIX 1

Legislative Framework

The statutory framework for working together

The following legislation emphasises the need for joint working between housing authorities, social services and other statutory, voluntary and private sector partners in tackling homelessness more effectively.

- s.213, s.213A and s.170 of the Housing Act 1996;
- s.1 of the Homelessness Act 2002;
- Homelessness Code of Guidance for Local Authorities.
- s.2 of the Local Government Act 2000;
- s.27 of the Children Act 1989;
- s.10, s.11 and s.13 of the Children Act 2004;
- Children (Leaving Care) Act 2000
- s.47 of the National Health Service and Community Care Act 1990;
- S.27 and s.31 of the Health Act 1999.
- Case law including M vs. LB Hammersmith and Fulham 08 and G v Southwark '09.
- Children in Care Custody Bill 2009
- Draft Guidance and Regulations Planning Transitions to Adulthood - DCSF 2010.
- Provision of Accommodation for 16 and 17 year old young people who may be homeless and/or require accommodation - DCSF/CLG, issued April 2010

In addition, the following legislation and guidance provides the wider framework for the work of the agencies party to this Protocol:

- Homelessness Act 2002
- Homelessness Code of Guidance for Local Authorities
- Children Act 1989
- Children Act 2004
- Children (Leaving Care) Act 2000
- Human Rights Act 1998
- Immigration and Asylum Act 1999
- Criminal Justice Act 1991
- Youth Justice Board National Standards
- United Nations Convention on the Rights of the Child
- National Health Service & Community Care Act 1990
- Data Protection Act 1998
- Sex Discrimination Act 1975, 1979, and 1986
- Race Relations Act 1976 and Amendment Act 2000

- Disability Discrimination Act 1995 and 2005
- Equalities Act 2006

The five Bucks local authorities have duties under various acts of parliament to meet the needs of young people who may have housing needs. The relevant acts are

- Children Act 1989
- Children Act 2004
- The Housing Act 1996
- The Homelessness Act 2002

The paragraphs below describe the areas relevant for young people who may have housing needs.

Housing Act 1996

Parts VI and VII set out the legal framework for assisting homeless people and allocating housing.

The following sections define homelessness and responsibility.

Section 175

(1) A person is homeless if he has no accommodation available for his occupation, in the United Kingdom or elsewhere, which he-

- (a) Is entitled to occupy by virtue of an interest in it or by virtue of an order of a court,
- (b) Has an express or implied licence to occupy, or
- (c) Occupies as a residence by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of another person to recover possession.

(2) A person is also homeless if he has accommodation but-

- (a) He cannot secure entry to it, or
- (b) It consists of a moveable structure, vehicle or vessel designed or adapted for human habitation and there is no place where he is entitled or permitted both to place it and to reside in it.

(3) A person shall not be treated as having accommodation unless it is accommodation which it would be reasonable for him to continue to occupy.

(4) A person is threatened with homelessness if it is likely that he will become homeless within 28 days.

Section 184 Duty to conduct inquiry into cases of homelessness or threatened homelessness. If the local housing authority have reason to believe that an applicant may be homeless or threatened with homelessness, they shall make such inquiries as are necessary to satisfy themselves:

- (a) whether he is eligible for assistance, and

- (4) On a request being duly made to them, the authority or authorities concerned shall review their decision.

Children Act 1989

Section 17 of the Act places a general duty on social services authorities to safeguard and promote the welfare of children within their area who are in need, by providing a range and level of services appropriate to those children's needs.

A *child in need* is defined as someone who is aged under 18 and:

- is unlikely to achieve or maintain a reasonable standard of health or development without the provision of appropriate services by a local authority, or
- whose health or development is likely to be significantly impaired or further impaired without the provision of appropriate services by a local authority, or
- who is disabled

Section 17(5) allows Social Services Authorities to call upon other agencies (particularly voluntary and community organisation) to provide services on their behalf.

Section 20(1) states that every local authority shall provide accommodation for any child in need within their area who requires accommodation as a result of:

- there being no person who has parental responsibility for him
- being lost or having been abandoned
- the person who has been caring for him/her being prevented from providing suitable accommodation or care

Section 20(3) states that accommodation shall be provided for any child in need who has reached the age of 16 and whose welfare the authority considers is likely to be *seriously prejudiced* if they do not provide her or him with accommodation.

Section 27 states that a social services authority can ask a housing authority to help in delivering services for children in need. The housing authority must comply with such a request to the extent that it is compatible with their own statutory duties and other obligations.

DoH Guidance on the Act recommends that close liaison between social services departments and housing is necessary and may be best achieved through the establishment of formal arrangements.

Children Act 2004

The emphasis of this Act is on the increasing need for agencies to work together and establish procedures to enable the sharing of information about

children and young people at risk. This means that joint protocols are required to formalise processes between agencies.

Case law

In recent years a number of judgments have been handed down by the House of Lords in cases concerning the interrelationship between the duty under section 20 of the *Children Act 1989* and duties under Part 7 of the *Housing Act 1996* where young people aged 16 or 17 who may require accommodation. The most recent of these has been *R (G) v Southwark [2009] UKHL 26*, but these have also included *R (M) v Hammersmith and Fulham [2008] UKHL 14*. These judgments have restated and clarified the established legal position that the duty under Section 20 of the CA 1989 Act takes precedence over the duties in the 1996 Act in providing for children in need who require accommodation, and that the specific duty owed under section 20 of the 1989 Act takes precedence over the general duty owed to children in need and their families under section 17 of the 1989 Act.

In April 2010 the DCSF and CLG jointly published Guidance to children's services authorities and local housing authorities about their duties under Part 3 of the Children Act 1989 and Part 7 of the Housing Act 1996 to provide and secure accommodation for homeless 16 and 17 year old young people who may be homeless and/or require accommodation. This guidance replaced the paragraphs in Circular LAC (2003) 13 *Guidance on Accommodating Children in Need and the Families*, issued by the Department of Health, which refer to how lone 16 and 17 year olds should be accommodated under the Children Act 1989 Act.

APPENDIX 2

Definitions

Intentionally homeless

Authorities are reminded by sections 191(1) and 196(1) of the 1996 Act, that, a person becomes homeless intentionally or threatened with homelessness intentionally, if:

- the person deliberately does or fails to do anything in consequence of which the person ceases to occupy accommodation (or the likely result of which is that the person will be forced to leave accommodation);
- the accommodation is available for the person's occupation; and
- it would have been reasonable for the person to continue to occupy the accommodation.

However, an act or omission made in good faith by someone who was unaware of any relevant fact must not be treated as deliberate.

A deliberate act might be a decision to leave their previous accommodation even though it would have been reasonable for them to stay there. A deliberate omission might be the non-payment of rent that led to rent arrears and eviction. Every young person's situation will be assessed individually and the circumstances surrounding them investigated.

It is recognised that some young people who are deemed to be homeless due to their own behaviour will need special consideration by both Children and Young People Service and Housing. Under the joint protocol all departments agree that young people should be allowed to make mistakes and still receive a service. However, some behaviour, which has led to a young person being asked to leave the family home, may be deemed to be serious enough to warrant an intentional decision. Intentionality is subject to a review of the circumstances in each individual case.

It is proposed that no young person should be viewed as intentionally homeless if (s) he:

- has been physically or sexually abused within current accommodation or has been at risk of abuse
- is escaping from severe conflict, violence or threats of violence within current accommodation
- moves into the district and is the responsibility of another local authority, but for whom 2 and 4 (above) apply
- is about to leave an institution (e.g. penal establishment depending on circumstances)

- There is a belief that the situation may be salvageable with more intense support.

.....Date 22/10/15


Signed on behalf of Aylesbury Vale District Council

.....Date 30/10/2015

Signed on behalf of Buckinghamshire County Council

.....Date 22/10/15

Signed on behalf of Chiltern District Council and South Bucks District Council

.....Date 22/10/15

Signed on behalf of Wycombe District Council