**MEDWAY PROTOCOL FOR HOMELESS 16 AND 17 YEAR OLDS**

**JOINT PROTOCOL BETWEEN**

**MEDWAY CHILDREN’S SERVICES & MEDWAY HOUSING DEPARTMENT**

**CONCERNING 16 – 17 YEAR OLDS WHO ARE IN NEED OF ACCOMMODATION**

**APPENDIX**

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This Protocol is intended to pull together the significant information from the statutory Guidance, reflecting the reasoning involved in the House of Lords’ judgment in R v Southwark and to provide clear direction for those who work for Medway and whose jobs involve dealing with 16 to 17 year olds who are homeless or who require accommodation. The full reference of that case is *R (on the application of G) v Southwark London Borough Council (2009) UKHL 26.*

Below are sections of the Children Act 1989 and Housing Act 1996 that are referred to in the Joint Protocol and that may be useful to have to hand.

**CHILDREN ACT 1989**

**Section 20 of the Children’s Act 1989**

**Provision of accommodation for children: general.**

(1)  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.

(2)  Where a local authority provide accommodation under subsection (1) for a child who is ordinarily resident in the area of another local authority, that other local authority may take over the provision of accommodation for the child within—

(a)  three months of being notified in writing that the child is being provided with accommodation; or

(b)  such other longer period as may be prescribed in regulations made by the Secretary of State.

(2A) Where a local authority in Wales provide accommodation under section 76(1) of the Social Services and Well-being (Wales) Act 2014 (accommodation for children without parents or who are lost or abandoned etc. ) for a child who is ordinarily resident in the area of a local authority in England, that local authority in England may take over the provision of accommodation for the child within—

(a) three months of being notified in writing that the child is being provided with accommodation; or

(b) such other longer period as may be prescribed in regulations made by the Secretary of State.

(3)  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.

(4)  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.

(5)  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.

(6)  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 feelingsregarding the provision of accommodation; and

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

(7)  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.

(8)  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.

(9)  Subsections (7) and (8) do not apply while any person—

(a) who is named in a child arrangements order as a person with whom the child is to live;

(aa) who is a special guardian of the child; or

(b) who has care of the child by virtue of an order made in the exercise of the High Court’s inherent jurisdiction with respect to children,

agrees to the child being looked after in accommodation provided by or on behalf of the local authority.

(10)  Where there is more than one such person as is mentioned in subsection (9), all of them must agree.

(11)  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.

**Section 17 Children Act 1989**

**17 Provision of services for children in need, their families and others.**

(1) It shall be the general duty of every local authority (in addition to the other duties imposed on them by this Part)—

(a) to safeguard and promote the welfare of children within their area who are in need; and

(b) so far as is consistent with that duty, to promote the upbringing of such children by their families,

by providing a range and level of services appropriate to those children’s needs.

(2) For the purpose principally of facilitating the discharge of their general duty under this section, every local authority shall have the specific duties and powers set out in Part 1 of Schedule 2.

(3) Any service provided by an authority in the exercise of functions conferred on them by this section may be provided for the family of a particular child in need or for any member of his family, if it is provided with a view to safeguarding or promoting the child’s welfare.

(4) The Secretary of State may by order amend any provision of Part I of Schedule 2 or add any further duty or power to those for the time being mentioned there.

(4A) Before determining what (if any) services to provide for a particular child in need in the exercise of functions conferred on them by 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 those services; 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.

(5) Every local authority—

(a) shall facilitate the provision by others (including in particular voluntary organisations) of services which it is a function of the authority to provide by virtue of this section, or section 18, 20, 22A to 22C, 23B to 23D, 24A or 24B; and

(b) may make such arrangements as they see fit for any person to act on their behalf in the provision of any such service.

(6) The services provided by a local authority in the exercise of functions conferred on them by this section may include providing accommodation and giving assistance in kind or . . . in cash.

(7) Assistance may be unconditional or subject to conditions as to the repayment of the assistance or of its value (in whole or in part).

(8) Before giving any assistance or imposing any conditions, a local authority shall have regard to the means of the child concerned and of each of his parents.

(9) No person shall be liable to make any repayment of assistance or of its value at any time when he is in receipt of universal credit (except in such circumstances as may be prescribed), of income support under Part VII of the Social Security Contributions and Benefits Act 1992, of any element of child tax credit other than the family element, of working tax credit, of an income-based jobseeker's allowance or of an income-related employment and support allowance.

(10) 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.

(11) 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.

(12) The Treasury may by regulations prescribe circumstances in which a person is to be treated for the purposes of this Part (or for such of those purposes as are prescribed) as in receipt of any element of child tax credit other than the family element or of working tax credit.

(13) The duties imposed on a local authority by virtue of this section do not apply in relation to a child in the authority’s area who is being looked after by a local authority in Wales in accordance with Part 6 of the Social Services and Well-being (Wales) Act 2014.

**HOUSING ACT 1996**

**Section 188**

**Interim duty to accommodate in case of apparent priority need.**

(1) If the local housing authority have reason to believe that an applicant may be homeless, eligible for assistance and have a priority need, they must secure that accommodation is available for the applicant's occupation.

(1ZA) In a case in which the local housing authority conclude their inquiries under section 184 and decide that the applicant does not have a priority need—

(a) where the authority decide that they do not owe the applicant a duty under section 189B(2), the duty under subsection (1) comes to an end when the authority notify the applicant of that decision, or

(b) otherwise, the duty under subsection (1) comes to an end upon the authority notifying the applicant of their decision that, upon the duty under section 189B(2) coming to an end, they do not owe the applicant any duty under section 190 or 193.

(1ZB) In any other case, the duty under subsection (1) comes to an end upon the later of—

(a) the duty owed to the applicant under section 189B(2) coming to an end or the authority notifying the applicant that they have decided that they do not owe the applicant a duty under that section, and

(b) the authority notifying the applicant of their decision as to what other duty (if any) they owe to the applicant under the following provisions of this Part upon the duty under section 189B(2) coming to an end.

(1A) But if the local housing authority have reason to believe that the duty under section 193(2) may apply in relation to an applicant in the circumstances referred to in section 195A(1), they shall secure that accommodation is available for the applicant's occupation until the later of paragraph (a) or (b) of subsection (1ZB). regardless of whether the applicant has a priority need.

(2) The duty under this section arises irrespective of any possibility of the referral of the applicant’s case to another local housing authority (see sections 198 to 200).

(2A) For the purposes of this section, where the applicant requests a review under section 202(1)(h) of the authority's decision as to the suitability of accommodation offered to the applicant by way of a final accommodation offer or a final Part 6 offer (within the meaning of section 193A), the authority's duty to the applicant under section 189B(2) is not to be taken to have come to an end under section 193A(2) until the decision on the review has been notified to the applicant.

(3) Otherwise, the duty under this section comes to an end in accordance with subsections (1ZA) to (1A), regardless of any review requested by the applicant under section 202.

But the authority may secure that accommodation is available for the applicant's occupation pending a decision on review.

**Section 189B**

**Initial duty owed to all eligible persons who are homeless**

(1) This section applies where the local housing authority are satisfied that an applicant is—

(a) homeless, and

(b) eligible for assistance.

(2) Unless the authority refer the application to another local housing authority in England (see section 198(A1)), the authority must take reasonable steps to help the applicant to secure that suitable accommodation becomes available for the applicant's occupation for at least—

(a) 6 months, or

(b) such longer period not exceeding 12 months as may be prescribed.

(3) In deciding what steps they are to take, the authority must have regard to their assessment of the applicant's case under section 189A.

(4) Where the authority—

(a) are satisfied that the applicant has a priority need, and

(b) are not satisfied that the applicant became homeless intentionally,

the duty under subsection (2) comes to an end at the end of the period of 56 days beginning with the day the authority are first satisfied as mentioned in subsection (1).

(5) If any of the circumstances mentioned in subsection (7) apply, the authority may give notice to the applicant bringing the duty under subsection (2) to an end.

(6)The notice must—

(a) specify which of the circumstances apply, and

(b) inform the applicant that the applicant has a right to request a review of the authority's decision to bring the duty under subsection (2) to an end and of the time within which such a request must be made.

(7) The circumstances are that the authority are satisfied that—

(a) the applicant has—

(i) suitable accommodation available for occupation, and

(ii) a reasonable prospect of having suitable accommodation available for occupation for at least 6 months, or such longer period not exceeding 12 months as may be prescribed, from the date of the notice,

(b) the authority have complied with the duty under subsection (2) and the period of 56 days beginning with the day that the authority are first satisfied as mentioned in subsection (1) has ended (whether or not the applicant has secured accommodation),

(c) the applicant has refused an offer of suitable accommodation and, on the date of refusal, there was a reasonable prospect that suitable accommodation would be available for occupation by the applicant for at least 6 months or such longer period not exceeding 12 months as may be prescribed,

(d) the applicant has become homeless intentionally from any accommodation that has been made available to the applicant as a result of the authority's exercise of their functions under subsection (2),

(e) the applicant is no longer eligible for assistance, or

(f) the applicant has withdrawn the application mentioned in section 183(1).

(8) A notice under this section must be given in writing and, if not received by the applicant, is to be treated as having been given to the applicant if it is made available at the authority's office for a reasonable period for collection by or on behalf of the applicant.

(9) The duty under subsection (2) can also be brought to an end under—

(a) section 193A (consequences of refusal of final accommodation offer or final Part 6 offer at the initial relief stage), or

(b) sections 193B and 193C (notices in cases of applicant's deliberate and unreasonable refusal to co-operate).

**Section 195**

**Duties in cases of threatened homelessness**

(1)  This section applies where the local housing authority are satisfied that an applicant is—

(a)  threatened with homelessness, and

(b)  eligible for assistance.

(2)  The authority must take reasonable steps to help the applicant to secure that accommodation does not cease to be available for the applicant's occupation.

(3)  In deciding what steps they are to take, the authority must have regard to their assessment of the applicant's case under section 189A.

(4)  Subsection (2) does not affect any right of the authority, whether by virtue of contract, enactment or rule of law, to secure vacant possession of any accommodation.

(5)  If any of the circumstances mentioned in subsection (8) apply, the authority may give notice to the applicant bringing the duty under subsection (2) to an end.

(6)  But the authority may not give notice to the applicant under subsection (5) on the basis that the circumstances in subsection (8)(b) apply if a valid notice has been given to the applicant under section 21 of the Housing Act 1988 (orders for possession on expiry or termination of assured shorthold tenancy) that—

(a) will expire within 56 days or has expired, and

(b) is in respect of the only accommodation that is available for the applicant's occupation.

(7)  The notice must—

(a)  specify which of the circumstances apply, and

(b)  inform the applicant that the applicant has a right to request a review of the

authority's decision to bring the duty under subsection (2) to an end and of the time within which such a request must be made.

(8)  The circumstances are that the authority are satisfied that—

(a)  the applicant has—

(i) suitable accommodation available for occupation, and

(ii) a reasonable prospect of having suitable accommodation available for occupation for at least 6 months, or such longer period not exceeding 12 months as may be prescribed, from the date of the notice,

(b)  the authority have complied with the duty under subsection (2) and the period of 56 days beginning with the day that the authority are first satisfied as mentioned in subsection (1) has ended (whether or not the applicant is still threatened with homelessness),

(c)  the applicant has become homeless,

(d)  the applicant has refused an offer of suitable accommodation and, on the date of refusal, there was a reasonable prospect that suitable accommodation would be available for occupation by the applicant for at least 6 months or such longer period not exceeding 12 months as may be prescribed,

(e)  the applicant has become homeless intentionally from any accommodation that has been made available to the applicant as a result of the authority's exercise of their functions under subsection (2),

(f)  the applicant is no longer eligible for assistance, or

(g)  the applicant has withdrawn the application mentioned in section 183(1).

(9)  A notice under this section must be given in writing and, if not received by the applicant, is to be treated as having been given to the applicant if it is made available at the authority's office for a reasonable period for collection by or on behalf of the applicant.

(10)  The duty under subsection (2) can also be brought to an end under sections 193B and 193C (notices in cases of applicant's deliberate and unreasonable refusal to co- operate).**]**

**HOMELESSNESS PRIORITY NEED ORDER 2002**

**Article 3:**

16 and 17 year olds other than two categories for whom local social services authorities have responsibility, namely, “relevant children” for the purposes of the Children Act 1989 or children in need to whom a duty is owed under section 20 of that Act. “Relevant children” are 16 and 17 year olds who have been in care but who have left care.