Accommodating Homeless 16-17 year olds: explaining the Southwark Judgement

The Judgement of the House of Lords in May of 2009 sets out the responsibilities of Housing and Children’s Services, in relation to 16-17 year olds who present to a Local Authority as homeless.

A flowchart has been agreed between Housing and CYPS together with a leaflet to give to young people. These are attached.

When a 16-17 year old presents as homeless Southwark states that it should be CYPS rather than Housing who undertake an initial assessment.

This includes young people from another area. The Children Act provides that we owe a duty to children in our area no matter where they are habitually resident and statutory guidance provides that if the situation is not clear and there is a dispute, a Young Person presenting as homeless should be accommodated by us while we sort out who is responsible. If another Authority have already accepted a duty to a young person then we can refer that Young person back. It may be that the other Authority will ask us to assist with the provision of accommodation and will pay for this.

CYPS must assess if the young person is a child in need and if so requires accommodation. If they do then the Young person must be accommodated under S20 Children Act 1989 (S20).

While CYPS are undertaking the assessment, the Young person has to be accommodated under S20 pending the outcome of the assessment.

Financial assistance under S17 for a young person to access accommodation should not be offered in these circumstances. This will be deemed to be a placement under S20. If this has happened in the past (i.e. a young person has been assisted under S17 with accommodation) and a question arises whether the young person was accommodated at that point, they will be deemed to have been accommodation under S20.

If the young person is not assessed as being a child in need and in need of accommodation then they should be referred for assessment by Housing to see if they are in priority need. During an assessment as to whether a young person requires accommodation under S20, the Southwark Judgement sets out a number if judgements must that must be made.
This is an extract from the actual judgement to assist staff in understanding the spirit of the judgement:

(1) Is the applicant a child?

(2) Is the applicant a child in need? This will often require careful assessment.

(3) Is he within the local authority’s area? Local authorities have to look after the children in their area irrespective of where they are habitually resident. They may then pass a child on to the area where he is ordinarily resident under section 20(2) or recoup the cost of providing for him under section 29(7). But there should be no more passing the child from pillar to post while the authorities argue about where he comes from.

(4) Does he appear to the local authority to require accommodation? In this case it is quite obvious that a sofa surfing child requires accommodation. But there may be cases where the child does have a home to go to, whether on his own or with family or friends, but needs help in getting there, or getting into it, or in having it made habitable or safe. This is the line between needing “help with accommodation” (not in itself a technical term) and needing “accommodation”.

(5) Is that need the result of:

(a) there being no person who has parental responsibility for him; for example, where his parents were unmarried, his father does not have parental responsibility, and his mother had died without appointing a guardian for him;

(b) his being lost or having been abandoned; or

(c) the person who has been caring for him being prevented from providing him with suitable accommodation or care. (this) has to be given a wide construction, if children are not to suffer for the shortcomings of their parents or carers.

(6) What are the child’s wishes and feelings regarding the provision of accommodation for him? “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.” See below

(7) What consideration (having regard to his age and understanding) is duly to be given to those wishes and feelings?

A 16 or 17 year old, who is competent and has all the information they need to make an informed decision, cannot be obliged to accept accommodation under S20 if they do not want it. Furthermore, a 16 or 17 year old who has been
accommodated under S20 may decide on the same basis that they no longer wish to be accommodated under S20. It is important that young people are given appropriate information to help them understand the implications of being in care, the support they will be offered and the fact that they will have a LAC plan that will be regularly reviewed. They should understand the difference between services offered to children in care and services offered under housing legislation. The leaflet attached should be given to all young people who are being assessed.

If a Young Person does not want to be accommodated under S20 they may become a child in priority need under Housing legislation and should be referred so that an assessment can be undertaken.

Accommodation provided under S20 is not limited to residential or foster care and can encompass a wide range of accommodation, Children’s services can ask any local housing authority for help with this and the housing authority must assist unless it would prejudice the exercise of their functions. CYPS have to pay for this. This would still be S20 accommodation even if provided by Housing.

Once the Authority accommodates a young person under S20 then it is likely that the Authority will owe them continuing duties once they reach 18 as “former relevant children” This will include the a duty to provide accommodation “if the young person's welfare requires it” until they are 21, or contribute to expenses incurred in living near to education or training f they are under 24.

**CURRENT ARRANGEMENTS & BCC RESPONSIBILITIES PARTICULARLY WITH REFERENCE TO CYPS**

The current support arrangements for homeless young people are as follows:

1. If the young person has an allocated social worker this worker should offer them support to find sustainable housing with family or friends. If this is not possible, the option of care should be fully discussed with the young person. If the young person agrees to care the type of placement to suit their needs must be discussed. The usual placement options of foster care or a children's home may not meet their needs. Other options such as projects, lodgings and housing with support should be considered. The social worker can ask Housing Solutions for assistance in identifying a suitable resource.

2. If the young person does not have an allocated social worker they will present to or be referred to the Housing Advice Team. They will be assessed by a social worker from that team. The social worker will intervene to see if the young person can live with someone from their network of family and friends. If they cannot, an initial assessment should be completed. If needed, he young person should be offered a place to stay whilst the assessment is completed. The young person enters care at the point where accommodation is provided. If the initial assessment concludes that the young person is a “child in need” the options available for help and support should be fully discussed with them. If, after considering the information, the young person agrees to be in care, the well established procedures for LAC should be followed.
3. Following discussion, if a homeless young person declines the option of being in care they should be referred for housing listed on the Housing Support Register. The information gathered during the assessment should be shared with housing staff. An investigation under Part VII of the Housing Act 1996 may be required. The young person may need to have temporary accommodation whilst the investigation takes place.

KEY POINTS

- The Southwark Judgement has charged Local Authorities with the responsibility of assessing this vulnerable group under Section 17 of the Children Act to determine whether they are children in need and in need of accommodation under Section 20 Children Act.

- In the context of an assessment, a young persons wishes and feelings must be ascertained. Young people can, with appropriate advice and information determine whether they wish to be accommodated under section 20. However a young person's capacity to make an informed choice with the support of advice will need to be incorporated into the assessment.

- The quality of the assessment is key to ensuring that the plan is appropriate for the young person. During heated disagreements family members can say things they do not mean. Parents may tell young people to leave and young people may threaten to walk out of home. These young people may not be homeless if some advice, guidance and intervention can resolve the family situation. In particular, judgement is necessary if the parents are stating that the young person can remain living at home. It is essential that some work is offered to young people to assist their understanding of the potential long lasting implications that can come with hasty decisions made in the heat of the moment. It is also important to ensure that young people learn to manage conflict in an appropriate way and the work offered needs to include reference to this.

- It is also important for young people to have awareness of the responsibilities that may come with independent living. In particular whatever resource they move into is likely to have rules and regulations that must be followed. It is unlikely that there will be the same flexibility that there can be in individual families in respect of rule breaking and agreement breeches. Young people in independent living will have to be aware that breeches of tenancy agreements may lead to far reaching sanctions.

- If the outcome of the assessment is that the young person is not a child in need or the young person has made an informed decision not to be accommodated under S20, then an assessment will need to be made as to whether that young person is a child in priority need of housing and referral to the relevant Multi Agency Referral panel for housing should be made.

- If a young person is deemed to be accommodated under section 20 they will need to be allocated to a qualified social worker and be considered a looked after child. They will need to be subject of regular LAC reviews,
health checks and planning and support for education and training. There are a range of leaflets and resources to make sure children in care are informed – these should be shared with the young person at this point.

- The requirement for increased support will continue under the legislation relating to care leavers if they are defined as 'relevant young people'. If they remain in care longer than 13 weeks they will also be considered eligible young people. A pathway plan will be required and they will be appointed a personal adviser.

- Permission to place a young person under the 'Southwark Ruling' should follow the same process as for any admission to care. The authorisation of an area manager should be sought and attention to paid to the gate keeping policy. A referral to ARP should also be made as funding for accommodation will need to be agreed through that route.

- If the young person is likely to remain in care and become an eligible young person then an immediate referral to the care and after team should be made through the normal transfer arrangements.

- The cost of the young persons accommodation and living expenses will be the responsibility of CYPS whilst they are young people accommodated under section 20. The should be paid the allowances appropriate to their accommodation whether in foster care or independent supported housing.