

Dorset Council

Joint Protocol for Support of Homeless 16–17-year-olds

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Foreword

As Corporate Directors of Housing and Community Safety and Children and Young People's Care and Protection Services, we are delighted to present our Joint Housing Protocol the Support of Homeless 16- and 17-year-olds.

We are committed to promoting and continuing the essential joint working between Children's Social Care and Housing Services in Dorset. This is to ensure the accommodation needs of our 16- and 17-year-olds are met, and that they can make good, realistic, and positive choices about where they live, and that they get all the support that they need. When things get tough, we work to ensure the effective management of housing crises for those who are 16/17 whenever they occur and to prevent homelessness. We remain committed to making Dorset the best place for young people to live. We know how important suitable accommodation is to being able to deliver this vision. We know that good housing underpins success in all areas of life.

As leaders in housing and children's social care, we are committed to working together in partnership, engaging, and partnering with all other corporate and community partners who can help us to support our young people to succeed and prosper. We see this joint protocol as symbolic of our joint ownership and ambition to secure the vision as set out in our Children and Young People's Plan.

Andrew Billany, Corporate Director for Housing and Community Safety, and Paul Dempsey, Corporate Director for Care and Protection



Andrew Billany



Paul Dempsey

1. Introduction

1.1 Dorset Council believes that young people are better off living at home, or within their family network, wherever it is safe and feasible for them to do so. We aim to help young people avoid homelessness wherever possible; our starting point is therefore prevention and early intervention.

1.2 This joint protocol sets out how we will support young people aged 16 and 17 who are homeless at risk of being homeless, or whose accommodation is inadequate or insecure. It is a joint protocol because it sets out how Children's Services and Housing will work together to reduce these risks. We will undertake preventive work whilst continuing to fulfil our statutory duties. We will work with young people whether they are currently in their family home or have left it.

1.3 The policy is based on solution-focussed and restorative approaches; this means that we will respond to homelessness and the risk of homelessness in a person-centred way that supports relationships at a local level.

1.4 We believe that our collaborative approach will result in a better, more consistent way of working that delivers improved outcomes for young people, including resolving difficulties at home and the prevention of homelessness in the first place.

1.5 This Protocol will be adopted as a Working Document and applies to all young people living in Dorset.

2. Key Principles

2.1 The following principles support this protocol:

- i) It is the responsibility of all agencies working with our young people to protect them wherever possible from becoming homeless and from harm.
- ii) The parents of, or those with parental responsibility for, 16 and 17 year olds are responsible for their children's welfare. A key commitment is to keep families together in their homes wherever possible because evidence shows that this is best for the young person in most instances.
- iii) We recognised that here is excellent preventative work taking place at a local level that sits outside of the Protocol. This work supports the principle outlined above; namely that, for most young people, staying in their family home is usually the best outcome for them.
- iv) The experience of homelessness is damaging to young people and to their life chances: the statutory joint guidance¹ states that 'it is in the best interests of most Young People aged 16 or 17 to live in the family home, or, where this is not safe or appropriate, with responsible adults in their wider family and friend's network.'
- v) Young people should be given every opportunity to have a realistic understanding of the options available to them, and to make informed choices about their future. Where considered appropriate and required, independent advocacy may be sought from organisations such as Citizens' Advice or Shelter.
- vi) Sometimes and despite everyone's best efforts, the pathway agreed with the young person breaks down. We are committed to ensuring that in such cases the pathway is rebuilt, the young person can go back to the appropriate stage, re-engage, and be reassessed by Children's Services and/or the Housing Department, as appropriate.

¹ [Provision of accommodation for 16 and 17 year olds who may be homeless and/or require accommodation \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/682217/provision-of-accommodation-for-16-and-17-year-olds-who-may-be-homeless-and-or-require-accommodation.pdf) (April 2018)

3. Statutory Context

3.1 Housing Act 1996 (Part 7 Amended) and the Homelessness Reduction Act 2017

3.1.1 The Homelessness Act 2002 amended Part 7 of Housing Act 1996 and introduced new categories of priority need groups including:

- All 16 and 17-year-old homeless applicants have a priority need for accommodation except those who are:

i) a relevant child or,

ii) a child in need who is owed a duty under s20 of the Children Act 1989

3.1.2 The Homelessness Act also brought about the requirement for all housing authorities to formulate a homelessness strategy which would encourage partnership working in the prevention of homelessness.

3.1.3 The framework for every local authority when assessing applications for homelessness assistance is contained within the Housing Act 1996, which was amended by the Homelessness Reduction Act in 2017. Essentially, every local authority has a duty to investigate claims of homelessness, when they are satisfied that an applicant is eligible (in respect of their immigration status) and is homeless or threatened with homelessness within 56 days. This triggers a statutory duty to carry out an assessment of the individual's needs and circumstances (that have led to them become homeless) and also put together a plan – known as a Personal Housing Plan – to help both the individual and the Authority work together on actions that prevent or relieve the threat of homelessness. These are the Prevention and Relief Duties of the Homelessness Reduction Act.

3.1.4 A Public Sector Duty was also brought in on 1st October 2018 for specified public bodies to refer individuals who they have assessed “may” be at risk of homelessness within 56 days to a Housing Options Team. This duty includes a duty on Children's Services specifically and referrals can be made using the standardised email address that all Local Authorities across England have adopted for public sector duty referrals – see [the Dorset Duty to Refer portal](#).

3.1.5 Assessments will focus upon prevention work as the key to successful interventions; decisions on the homelessness application are set aside until the end of the process and offers of accommodation that are deemed suitable can bring the duties to an end. An applicant will generally only receive a decision on their case once prevention and relief work has been exhausted and will focus on whether an individual household is:

- Eligible for assistance
- Homeless or threatened with homelessness within 56 days

- Has an assessed priority need
- Has become homeless intentionally
- Has a local connection.

3.1.6 The promotion of both operational and strategic joint working between Housing and Children's Services is a crucial element to achieve effective provision of support and a range of suitable accommodation options for young people.

3.2 Definition of homelessness.

3.2.1 Sections 175-177 of the Housing Act 1996 cover the definition of homelessness and the meaning of accommodation:

A person is homeless if he or she has no accommodation which he or she can legally occupy by virtue of:

- i) an interest therein (e.g., as an owner, lessee or tenant or by virtue of a court order);
- ii) an express or implied licence to occupy (e.g., as a lodger or when living with a relative), or
- iii) any enactment or rule of law giving him or her the right to remain in occupation or restricting the right of another person to recover possession

3.2.2 This protocol focuses on 16 and 17-year olds who are being asked to leave their accommodation for any reason. This may include breakdown at home, eviction from supported housing or because they are no longer able to stay with other family members or friends.

3.2.3 Homelessness is defined in law as being where an individual lacks accommodation. An individual is defined as being homeless, or threatened with homelessness within 56 days, if there is no accommodation that they can access and have a legal right to occupy, or if they cannot secure entry to accommodation that they have a legal right to occupy. Consideration should also be given as to whether it is reasonable to expect an individual to occupy such accommodation, which would take due consideration of the cost of it, its condition and any possible risks that may be posed to the individual if they were to remain in occupation.

3.2.4 Once an individual is considered homeless or at risk of homelessness within 56 days, either a Relief (once they are homeless) or a Prevention (at risk of homelessness) Duty are triggered and run for a period not exceeding 56 days, during which the Housing Options role is to do everything possible to either prevent them becoming homeless or relieve it if has already happened.

3.2.5 Housing duties do not, however, start until the Joint Housing Assessment has been completed. At the end of a Joint assessment, Children's Services and Housing should have reached a decision on whether the young person is a "child in need" and requires accommodation as a result of one of the scenarios set out in s20(a) to (c) or s20(3) of the Children Act (1989). A child may be assessed as needing accommodation whilst not needing to become looked after.

3.2.6 If the young person, having been properly informed (through discussion with Children's Services and Housing officers, the provision of appropriate written information and access to advocacy where indicated) of the outcome of the assessment does not wish to become a child in care, the Housing Team have a duty to provide interim accommodation for a period of 56 days until a decision on their application for homelessness assistance is made.

3.3 Section 191 of the Housing Act - Intentionally homeless

(1) A person becomes homeless intentionally if they deliberately do or fail to do anything in consequence of which they cease to occupy accommodation which is available for their occupation and which it would have been reasonable for them to continue to occupy.

(2) For the purposes of subsection (1) an act or omission in good faith on the part of a person who was unaware of any relevant fact shall not be treated as deliberate.

(3) A person shall be treated as becoming homeless intentionally if—

(a) they enter into an arrangement under which they are required to cease to occupy accommodation which it would have been reasonable for them to continue to occupy, and

(b) the purpose of the arrangement is to enable them to become entitled to assistance under this Part,

and there is no other good reason why they are homeless.

3.3.1 It would be unusual for any housing authority to consider that a 16 or 17 year old had made themselves intentionally homeless from their parent's home. However, there will be times that an intentional decision has to be considered:

- i) Breaching a licence/tenancy agreement (non-payment of rent; anti-social behaviour).
- ii) Voluntarily leaves accommodation with the full understanding of the consequences of their actions.
- iii) Behaves in an unreasonable or anti-social way that they reasonably know would lead to them being asked to leave their accommodation (e.g., they have been warned about behaviour in the family home but continue regardless)

3.3.2 It is the young person who must deliberately have done, or failed to do, something which resulted in their homelessness or threatened homelessness.

3.3.3 If a 16/17-year-old is considered to be homeless intentionally, Housing Options is only under a duty to provide interim accommodation for a 'reasonable' period of time (this will vary from case to case depending on the individual's circumstances but will be no more than 28 days). Housing Options will work closely with Children's Services to take account of all information in the making of such decision and ensure that they are informed immediately if they reach such a decision, whereupon it will be for Children's Services to consider again offering support under s20.

3.3.4 If a professional identifies that a young person may have difficulties relating to their tenancy which may lead to eviction, then they should contact the Housing Options Team to undertake joint preventative work.

3.4 Section 10 of the Children Act 2004 'Early Help'

3.4.1 Providing Early Help is more effective in promoting the welfare of children than reactive intervention. Early Help means providing support as soon as a problem emerges, at any point in a child's life, from the foundation years through to the teenage years.

3.4.2 Effective Early Help relies upon local agencies working together to:

- Identify children and families who would benefit from early help;
- Undertake an assessment of the need for early help; and
- Provide targeted Early Help services to meet the assessed needs of a child and their family and significantly improve the outcomes for the child. Local authorities, under section 10 of the Children Act 2004, have a responsibility to promote inter-agency cooperation to improve the welfare of children.

3.4.3 Children and families may need support from a wide range of local agencies. Where a child and family would benefit from coordinated support from more than one agency (e.g., education, health, housing, police) there should be an Early Help Assessment completed by a lead professional. The assessment should identify what help the child and family require to prevent needs escalating to a point where intervention would be needed via a statutory assessment under the Children Act 1989.

3.4.4 The assessment should be undertaken by a lead professional who should provide support to the child and family, act as an advocate on their behalf and coordinate the delivery of support services.

3.5 Section 17 of the Children Act 1989 'Child in Need'

3.5.1 A child in need is defined under the Children Act 1989 as a child who is:

- a) unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision of services by a local authority under this Part;
- b) in circumstances where their health or development is likely to be significantly impaired, or further impaired, without the provision of such services; or
- c) a disabled child

3.6 Section 47 of the Children Act 1989 ‘Child Protection’

3.6.1 This section states that a local authority and its safeguarding partners must take safeguarding action where there is reasonable cause to suspect that a child who lives, or is found, in their area is suffering, or is likely to suffer, significant harm.

3.7 Section 20 of the Children’s Act 1989 ‘Provision of accommodation for children’

(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 them;
- b) they are lost or have been abandoned; or
- c) the person who has been caring for them being prevented (whether or not permanently, and for whatever reason) from providing them with suitable accommodation or care.

(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 is able to provide accommodation) if they consider that to do so would safeguard or promote the child’s 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 feelings regarding the provision of accommodation; and
- b) give due consideration (having regard to age and understanding) to such wishes and feelings of 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; or
 - ii. arrange for accommodation to be provided,
 - iii. objects.²

3.7.1 If a young person is accommodated under section 20 they become a child in care and they are afforded further protection and rights with a range of support and services, including a named social worker and a care plan. The allocation of a social worker and a plan are also requirements where a child remains a Child in Need. The plan must address accommodation and support with named contacts, timescales for action and review dates. Young people who are in care beyond the age of 16 will also be entitled to support as they leave care. The type of support and legal entitlement depends on how long they have been looked after. However, if they have been looked after for 13 weeks or more at any point after their 14th birthday and are still looked after on or after their 16th birthday, they are likely to qualify for leaving care support up to the age of 25.

3.7.2 It must be noted that, whilst a local authority can offer services and support to a young person under section 17 of the Act, if a section 20 duty is owing, they cannot substitute the section 20 duty with section 17 powers (*see 1.2 Ministry of Housing, Communities and Local Government 2018*).

3.7.3 The seven tests for the local authority duty to accommodate are:

- Are they a child?
- Are they a child “in need”?
- Are they within the local authority’s area?
- Does he/she appear to the local authority to require accommodation?
- Is that need the result of section 20(1)(a)-(c), or 20(3) or 20(4) – see section 20 above?
 - What are the child’s wishes and feelings regarding the provision of accommodation for him/her?
 - What consideration (having regard to his/her age and understanding) is duty to be given to those wishes and feelings?

3.7.4 The homelessness legislation takes precedence in the event that a young person aged 16 or 17 years old does not give informed consent for Children’s Services to accommodate under s20, but they can, alternatively, be supported by Children’s Services under s17.

² In the case of a 16/17 year old and even if a parent objects, if the young person wishes to be a Child Looked After, they can be if they are deemed competent to make that decision.

4. Early Intervention

4.1 At the point any professional becomes aware that there may be a risk of family breakdown or other potential homelessness of a 16/17-year-old, they should contact the Children's Advice and Duty (ChAD) Team for advice, and to make a referral if appropriate.

4.2 Additionally, in line with the duty to refer obligations set out in the Homelessness Reduction Act 2017, notification should be made via [the Duty to Refer portal](#).

4.3 This will trigger a multi-agency assessment which will include:

- Undertaking a home visit and offering mediation to the young person and their parent/person with parental responsibility
- Considering evidence of homelessness, (reminding all that if there are no safeguarding issues and a parent will provide accommodation they are NOT homeless)
- Contacting family members and connected persons to support their remaining in the family home, or to explore placement with a connected person
- Managing expectations and informing young people, parents, carers and professionals of the realities of leaving the family home at a young age and what the likely housing options will be
- Explaining consequences for any warnings, breaches of accommodation, Acceptable Behaviour Contracts or Notice to Quit/Eviction

4.4 The officer leading the assessment should also ensure that relationship support work is offered to the young person and their parent(s) or carers. The assessment should produce a clear understanding of the key issues driving the risk of homelessness, and the support that is needed to reduce these risks.

5. Joint Assessment

5.1 Legislation, government guidance and case law are clear what should happen when a young person is homeless or at risk of homelessness. This is a joint protocol evidences our commitment to cohesive working that will promote the health and wellbeing of young people. The young person's wishes and feelings must always be taken into consideration, and the offer of independent advocacy made available to them.

5.2 Procedure

5.2.1 The following procedure aims to provide a framework for both Children's Services and Housing Options to follow when dealing with young people aged 16/17 who may be either homeless, or at risk of being made homeless (this includes young people facing eviction from supported housing):

5.3 Risk of Homelessness Highlighted

5.3.1 Initial enquiries are made by the service first contacted about the risk or actuality of homelessness. Where the first contact regarding homelessness is made to Housing Options, and no other services are involved, Housing Options will carry out the first enquiries whilst referring to the Integrated Front Door (MASH), gaining and sharing information between professionals to agree next steps.

5.3.2 When the first contact regarding homelessness is with Children's Services it will be via the Children's Advice and Duty (ChAD) team unless the child is already open to Children's Services. In this event, the allocated team is responsible for undertaking these enquiries.

The enquiries include speaking with parents and/or others holding parental responsibility (PR), and anyone else deemed relevant in order to explore whether homelessness has occurred or is likely to occur, and if so, what other risks have arisen or may arise as a result. It is important to identify what has happened that has led to the breakdown in relationships and remind the family that the young person is still a child, and they have parental responsibility for them. Parents and extended families should be advised that it is not acceptable to make their child homeless.

If following these conversations, it becomes clear that the young person cannot return home, the lead professional should seek to identify alternative suitable accommodation as soon as possible. The young person should be encouraged to remain within the family unit until such accommodation is found, unless there would be a risk in their doing so.

Housing Options and Children's Services will share information and consult with each other so that all parties are aware of the situation and do not duplicate or undermine each other's actions.

Whilst it is often the case that a young person does not wish to return home, unless it is identified that there are risks inherent in returning, it will be considered reasonable to do so, either with or without additional family support to maintain the relationships at home. In any event information will always be shared between the two Services.

5.3.3 ChAD or the allocated team will check their records and seek consent to share information as required. Where there are safeguarding concerns, and the seeking of consent may place the child or other children at risk, the child's Social Worker and their Manager may decide not to seek consent.

5.3.4 If no accommodation with family and friends is available for the young person, Children's social care will take the lead responsibility for identifying emergency accommodation for them. If accommodated for more than 24 hours by the local authority, the Young Person becomes a child in care. In these instances, Dorset Council's procedures for the Decision to Look After a child, and for Care Planning, should be followed, and the relevant managers notified.

A joint assessment will be required within 24 hours of placement to decide the next steps for appropriately accommodating the young person. This will involve a Housing Caseworker from Housing Options and a Social Worker from Children's Services. If a young person is not accommodated by the Local Authority but still has a housing need then a Joint Housing Assessment should be undertaken jointly by a Housing Officer and a Social Worker within 5 working days.

The information gathered as part of this Joint Housing Assessment process will inform Children's Social Care's Single Assessment and Housing Options Needs Assessment.

The Joint Housing Assessment should be completed within 10 working days. The assessment should be child-centred and holistic in approach, addressing the young person's wider needs, as well as that for accommodation. The Joint Housing Assessment is not limited to one meeting between Children's Social Care and Housing, it is an on-going process and Housing and Children's Social Care should continue to liaise with one another throughout the process.

5.3.5 Where an existing assessment (e.g., recent Single Assessment) comprehensively addresses social and housing needs, that may be used, unless the Young Person presents with a change in circumstance, in which case a new assessment should be completed. However, where a new joint holistic assessment is required, the following should be included:

- A brief social history of the individual and their family
- The reasons that homelessness has become a possibility
- What has been done to avoid homelessness and what was the outcome?

- What accommodation options have been considered and discounted? Why?
- The views of the young person, their parents, family and carers (as appropriate)
- Any specific areas of vulnerability: e.g., care status, health, contextual safeguarding
- What are the risks of accommodating the young person?
- What are the risks of not providing accommodation?
- What support can be made available to an accommodation provider?

5.3.7 Sustainable and appropriate housing solutions will be considered, that meet the needs of the young person who is, legally, still a child. There will continue to be a joint approach between the Children's Services and Housing Options following the assessment with the departments working together to ensure the most suitable option is delivered to the young person. Neither Service should end involvement without consulting the other and reaching agreement about next steps.

5.3.8 Either agency may identify the place for the young person; depending on their individual circumstances and whether the lead agency is Children's Services or Housing Options. The best means of support for the child at this time, remains their parents and family. The social worker may, if required, accompany the young person to appointments and will take the lead in sorting out benefits and payments. If the young person is not under s20 and leading duties fall under the Homelessness Legislation, not the Children's Act duties, then accommodation would be sourced via the Housing Options Team with joint working to understand how best the young person may sustain the proposed solution.

5.3.9 In some cases, Children's Services may agree to act as Guarantor (for a privately rented property) for a young person aged 16-17, This is an exceptional circumstance and will only be considered when all other appropriate options have been exhausted (e.g., provision of Rent in Advance or a deposit through Housing Options). Please see the relevant procedure.

5.4 The Young Person's Choices

5.4.1 At the initial Joint Housing Assessment meeting, there should be a transparent discussion with the young person regarding the benefits and drawbacks of taking their case forward under one of the following: Part 7 Housing Act 1996, s17 Children Act 1989 or s20 Children Act 1989.

5.4.2 These options should be presented to them in an unbiased way, as each option has advantages and disadvantages for the young person. The option must be the right one for that specific young person based on their wants, needs and the specific circumstances of their case. The Young Homelessness leaflet

should be provided to the young person to help them to understand the options and allow them to make an informed decision on what is best for them.

5.4.3 If a Young Person wishes to be considered for s17 or s20, Childrens Social Care will lead on the assessment. Housing will continue to assist and advise. Children's Social Care will complete their Single Assessment and decide whether or not the young person has met threshold to be considered as "a child in need". If they do, the young person will be accommodated under either s.20 or s.17 depending on the young person's specific circumstances. Dorset Council cannot refuse to offer s.20 support if the threshold for s.17 is met, and the young person specifically wishes s.20 support. The decision for a child to become looked after may be made in principle to allow for the provision of emergency accommodation but can subsequently be reviewed after 24 hours in order to reach the best decision for the child.

5.4.4 Decisions regarding s.20 must be approved by the relevant manager; see the Local Scheme of Nomination and Delegated Authority for more information.

5.4.5 If the Young Person wishes to be supported under Part 7, Housing will take the lead and Children's Social Care will complete their single assessment based on information gathered. Children's Social Care will consider what support services are needed to meet their non-housing related needs.

5.4.6 Housing Options have a duty to provide interim accommodation for a period of 56 days until a decision on the application for homelessness assistance is made.

5.4.7 A flexible approach will be needed between the two services to ensure that sustainable and suitable accommodation is sourced for the young person, and this can take time. Where a young person is initially accommodated by Children's Services but wishes to be supported under the Housing Act 1996, the immediate removal of Children's Services support would likely render them homeless. Support may therefore need to continue from Children's Social Care until appropriate accommodation is sourced by Housing colleagues as temporary accommodation is deemed inappropriate for young people.

5.4.8 Conversely, Housing Options may make an adverse decision on a young person's homeless application and no duty may therefore be owed. This may be as a result of the young person losing their accommodation due to their own behaviour and being deemed to be intentionally homeless. In such circumstances, it would automatically trigger Children's Social Care to revisit the decision on their role and duties and provide the young person with support through Children's Social Care.

6. Monitoring and Review

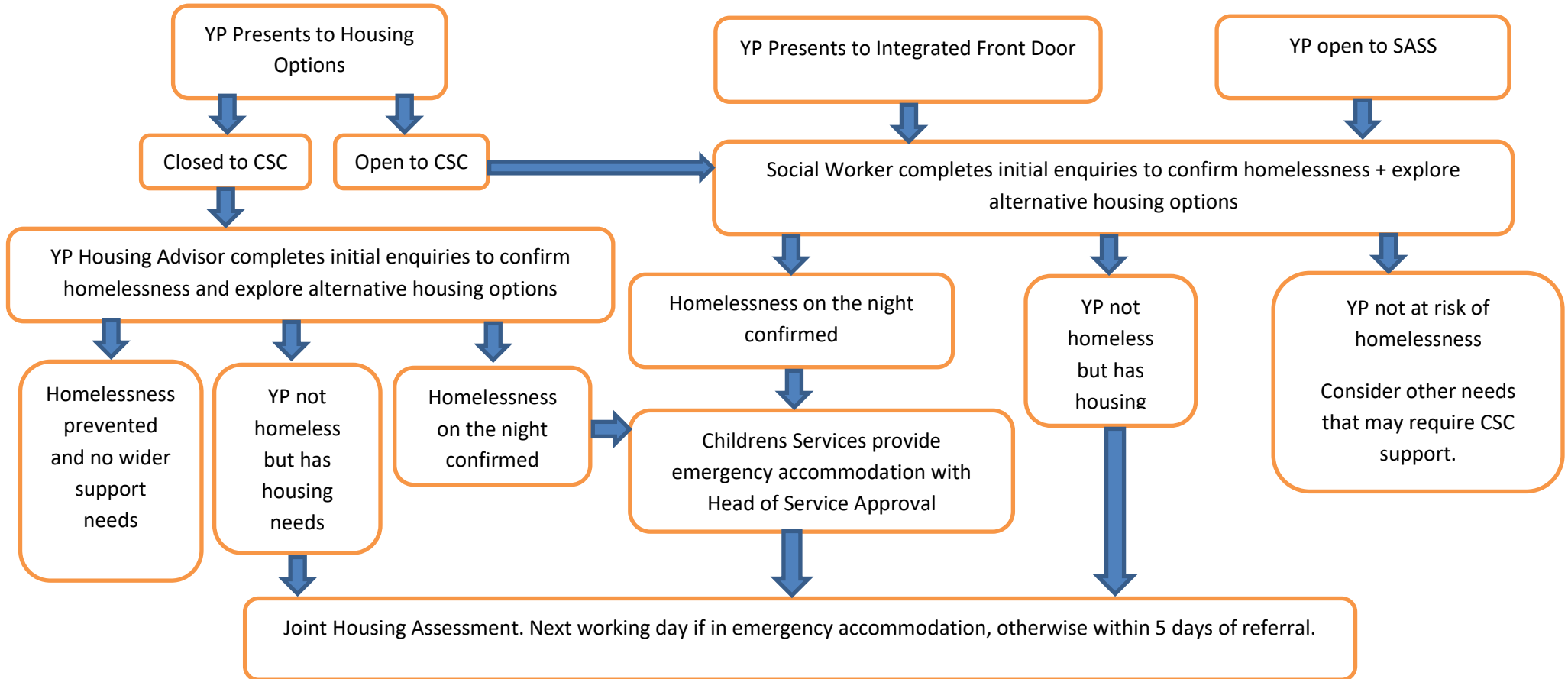
6.1 We have defined success as follows:

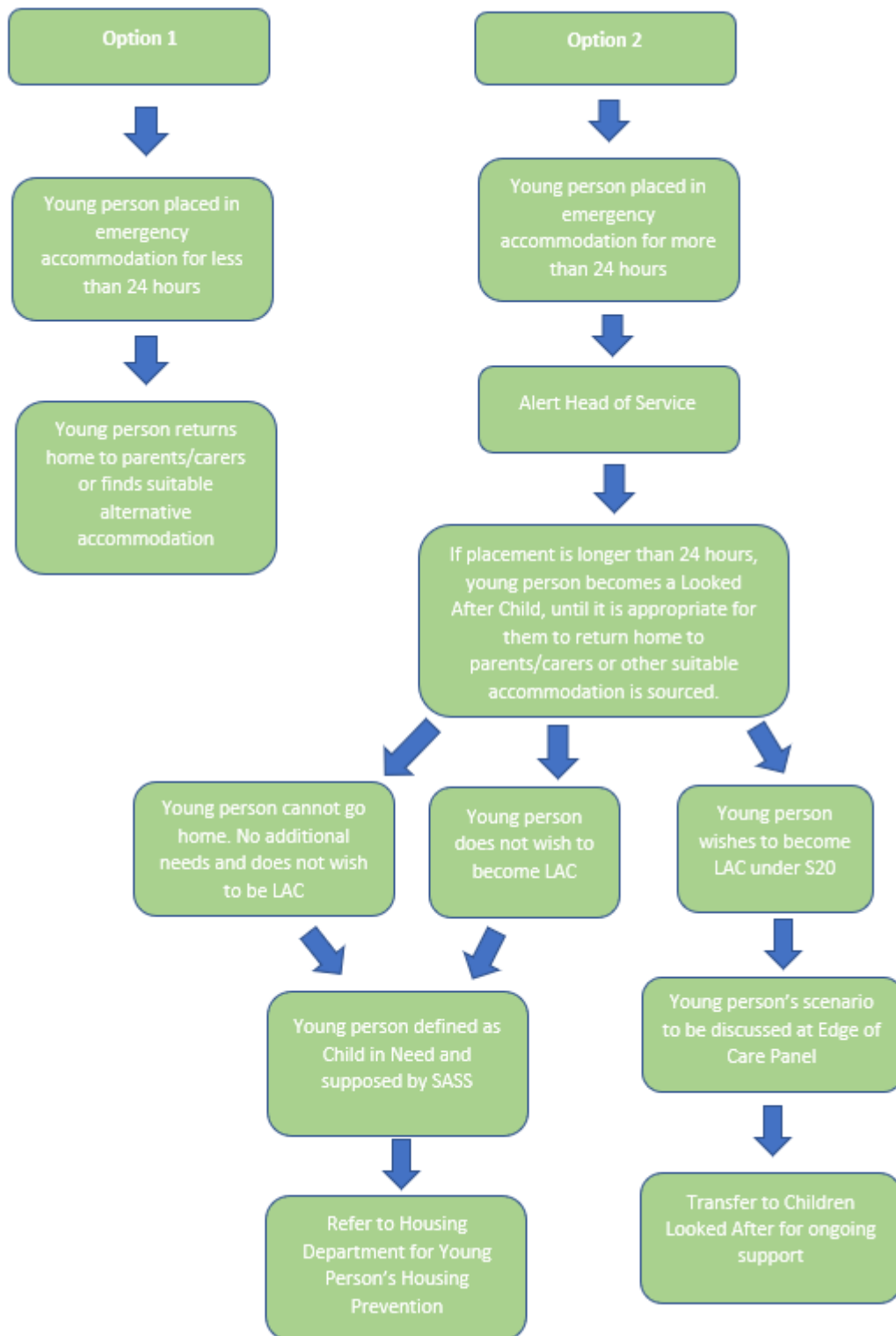
“A young person who is vulnerable, homeless and 16/17 years old will receive an efficient and seamless service which results in a successful outcome for them. That successful outcome, as defined by our Young People, will be to remain in sustainable housing that meets their needs. To achieve this outcome, support agencies will adopt a Pathways approach, which means that they will work collaboratively together to make the process clear, seamless, and effective.”

6.2 This Protocol will be reviewed regularly in line with multi agency procedures and a formal review initially after a year to identify cases which demonstrate good joint working and where issues are identified, a willingness to address these proactively by working together.

- Monitor the number of young people presenting as homeless (to either Families and Children’s Service or Housing Options).
- A sample of assessments where housing is the presenting issue will be audited to assess current joint practice in this area.
- Monitor the outcomes for individuals presenting as homeless.
- Consider qualitative data of the difference and benefit the approach of this protocol has made to those approaching as homeless – questionnaires, interviews, exit interviews.

5.4 The Flowchart





APPENDIX 1

The Legal Context

R (on the application of G) v London Borough of Southwark

The House of Lords judgment in the case of *R (on the application of G) v London Borough of Southwark* was handed down on 20 May 2009. The principal legal issue in this case was: what do the criteria in section 20(1) of the *Children Act 1989* mean and how, if at all, is their application affected by the other duties of children's authorities in particular section 17 of the 1989 Act and by the duties of housing authorities under Part 7 of the *Housing Act 1996*?

In *R (G) v LB Southwark* the central issue was: where a child of 16 or 17 who has been thrown out of the family home seeks help from the local Children's Services authority, is found to be homeless and a child "in need", and wishes to be accommodated by them under section 20 of the *Children Act 1989*, can the Children's Services authority instead refer him to the local housing authority for accommodation under the homelessness legislation (Part 7 of the *Housing Act 1996*)? The case was heard on appeal from the Court of Appeal, which, by a majority of 2 to 1, had upheld Southwark's ability to refer the child for assistance under the homelessness legislation even though a duty to provide accommodation had been accepted under section 20(1) of the *Children Act 1989*.

The House of Lords was unanimous in allowing the appeal. The leading opinion, delivered by Baroness Hale, reaffirmed the House of Lords' opinions in *R(M) v LB Hammersmith and Fulham* and sets out the approach that children's services authorities should take when performing their statutory duties to 16 and 17 year olds who are found to be homeless and "in need". The ruling confirmed the Government's view that local children's services authorities should presume that any lone, homeless child should be provided with accommodation under section 20(1) of the *Children Act 1989* unless the child is not in the local authority's judgement (based on an initial screening assessment), a child "in need". In nearly all cases, the impact of a child being homeless and their parents being unable to provide them with suitable accommodation or care would result in such significant challenges to the child's welfare that the child will be a child "in need".

The House of Lords reiterated that the *Children Act* has primacy over the *Housing Act* in providing for children in need. The duties of local children's services authorities to accommodate children in need cannot be circumvented by referring the child to the housing authority, whose duties under Part 7 of the *Housing Act 1996* provide a safety net only for those (very few) homeless children who will not meet the criteria for accommodation under section 20 of the 1989 Act. Examples of the small number of homeless 16 and 17 year olds who would have priority need under the homelessness legislation (by virtue of article 3 of the *Homelessness (Priority Need for*

Accommodation) (England) Order 2002) would include those whose need for accommodation did not fall within the circumstances specified in S.20(1) of the 1989 Act - for example, because they had been living independently for some time prior to their homelessness - and those whose need for accommodation fell within S.20 but who did not want to be accommodated under S.20. Such young people must be judged to be competent to make such a decision and have had the benefit of advice about the consequences of making such a decision.

Lord Neuberger's judgment, which dealt with the interrelationship between the section 20 duty and the duty under Part 7 of the Housing Act 1996, provides that the purpose of the 2002 Order was to fill the gap whereby there had been no specific duty to secure accommodation for homeless children aged 16 or 17 whose circumstances did not bring them within S.20 of the Children Act. The purpose of the 2002 Order was not to enable a children's services authority to divert its duty under S.20 to the housing authority, thereby emasculating the assistance to be afforded to children aged 16 or 17 who "require accommodation".

It will be extremely important that there continues to be close partnership between children's services authorities and housing authorities to support local authority responsibilities under the Children Act for meeting the needs of children in their area.

Baroness Hale referred to section 27 of the Children Act 1989, which empowers a children's authority to ask other authorities, including *any* local housing authority, for "help in the exercise of any of their functions" under Part III of the 1989 Act. The requested authority must provide help if it is compatible with their own statutory or other duties and does not unduly prejudice the discharge of their own functions. But, she said, this does not mean that the children's authority can avoid their responsibilities by "passing the buck" to another authority; rather that they can ask another authority to use its powers to help them discharge theirs.

Complaint against Dover City Council and Kent County Council, 31 July 2012

A homeless 16 year old boy, who had previously been in care and had drug-related issues, had applied to the council as homeless in January and June 2009. The council should have accepted the applications and applied a joint protocol agreed with the county council for dealing with homeless children in need. Both councils were found to have acted contrary to their Joint Protocol and/or contrary to law. The Local Government Ombudsman recommended that the councils between them pay £10,000 compensation.

Prevention of Homelessness and provision of accommodation for 16 and 17 years old young people who may be homeless and/or require accommodation

Following the *G v Southwark* 2009 House of Lords judgment, the Government issued joint statutory guidance from the Department for Children, Schools and Families (now the Department for Education) and Department for Communities and Local Government - *Provision of Accommodation for 16 and 17 year old young people who may be homeless and/or require accommodation*. In April 2018, this guidance was

updated. This guidance outlines the legal duties under the Children Act 1989 and Housing Act 1996 for 16 and 17-year-old young people who are homeless.

The joint statutory guidance gives clear direction on the complementary roles of children's services authorities and local housing authorities in implementing their separate statutory roles. The *G v Southwark* judgment clarified that in the case of a homeless 16- or 17-year olds, children's law takes precedence over housing law. In light of this clarification, a fundamental principle of the joint statutory guidance is that all 16 and 17 year olds who are homeless should be assessed by children's services under the Children Act 1989 to determine whether they are a child in need, as set of in section 17 of the Act and, if so, whether a duty exists to offer accommodation under section 20 of the Children Act.

Young people aged 16 or 17 are still children and that as such, all agencies have duties and responsibilities to act together to protect them³ if they are suffering, or likely to suffer, significant harm.

Key extracts from this statutory guidance are:

1.3 Whilst the section 20 Children Act 1989 duty takes precedence, housing services also have duties towards young people who are homeless or threatened with homelessness. Duties owed by each service will depend on a range of factors, including which service they initially seek help from; the outcomes of any assessments and enquiries; and the wishes and feelings of the young person and their family.

It is therefore essential that children's services and housing services work together to plan and provide services that are centred on young people and their families and prevent young people from being passed back and forth between services.

2.3 Work undertaken by children's services and housing services to prevent a 16 or 17 year old from becoming homeless may be undertaken under both section 17 of the 1989 Act and section 195 of the 1996 Act. Any preventative work should be undertaken alongside the assessment processes outlined in this guidance and should not delay the provision of accommodation or performance of other statutory duties where these are owed.

3.1 Where a 16 or 17-year-old seeks help from local authority children's services or is referred to children's services by some other person or agency as appearing to be threatened with homelessness, children's services must carry out an assessment. This applies to all young people, including 17 year olds who are approaching their 18th birthday.

3.4 Where a 16 or 17 year old seeks help or is referred, and it appears that they have nowhere safe to stay that night, then Children's Services must secure suitable emergency accommodation for them under section 20 of the 1989 Act, whilst their needs, including their need for continuing accommodation and support, are further

³ *Working together to safeguard children*, guidance for children's services authorities and their partners published by DCSF (now Department for Education) 2018

assessed. If the young person is accommodated for a continuous period of more than 24 hours the young person will become looked after (further information on section 20 below).

3.12 As a result of being accommodated by Children's Services for a continuous period of more than 24 hours, the young person will become looked after, and the Local Authority will owe them the duties that are owed to all looked after Children, and only they cease to be looked after, the duties that are owed to care leavers under that Act. Whilst accommodated under s20, the young person will not be eligible for welfare benefits, including housing benefit or housing costs under universal credit. Children's Services will have a duty to maintain them, including meeting the cost of accommodation.

3.18 A multi-agency assessment should make clear from the outset who is responsible for what actions, within what timescales, and what the possible outcomes of the assessment might be – in line with local protocols for assessment, as required under Working Together to Safeguard Children.

3.28 Where a young person seeks help because of homelessness, the assessment must necessarily reach a decision as to whether or not the young person is a child in need and requires accommodation as a result of one the scenarios set out in section 20(1)(a) to (c) or section 20(3).

3.37 An assessment is not complete until children's services have decided what action is necessary to respond to the young person's needs and this has been communicated to the young person, the adults responsible for their care, housing services and any other relevant agencies.

3.41 Where a young person says they do not wish to be accommodated, a local authority should reach the conclusion that the young person's wishes are decisive only as part of an overall judgment of their assessed welfare needs and the type and location of accommodation that will meet those needs.

3.42 It will be essential that the young person is fully consulted about and understands the implications of being accommodated by children's services and becoming looked after. The social worker leading the assessment must provide realistic and full information about the package of support that the young person can expect as a looked after child and, subsequently, as a 'former relevant' care leaver (as defined in section 23C (1) of 1989 Act). If they are not looked after for the prescribed period, the young person leaving care would be a 'person qualifying for advice and assistance' as set out in section 24 of the 1989 Act.

3.43 Children's services should also ensure that the young person receives accurate information about what assistance may be available to them if they do not become looked after, including from housing services under Part 7 of the 1996 Act. This will include any entitlement for assistance under Part 7. The considerations a young person needs to be made aware of are:

- a. duties on housing services to undertake an assessment, develop a personalised housing plan and to take steps to help the applicant retain or secure accommodation (sections 195 and section 189B of the 1996 Act),
- b. the requirement on the applicant to cooperate and for applicants to take steps themselves as set out in a personalised plan (section 193B and section 193C of the 1996 Act),
- c. the 'accommodation offer' under the relief duty – suitable accommodation which has a reasonable prospect of being available for occupation for at least 6 months (section 189B and section 195 of the 1996 Act),
- d. the implication of turning down offers of accommodation that are suitable (s194A of the Housing Act 1996).

3.44 This information should be provided in a “young person friendly” format at the start of the assessment process and be available for the young person to take away for full consideration and to help them seek advice.

3.62 Local authority children’s services are among the public authorities which are required to notify a housing authority of service users they consider may be homeless or threatened with homelessness (i.e., it is likely they will become homeless within 56 days) (section 213B of 1996 Act). Before making a referral, a public authority must:

- a. have consent to the referral from the individual;
- b. allow the individual to identify the housing authority in England which they would like the notification to be made to; and,
- c. have consent from the individual that their contact details can be supplied so the housing authority can contact them regarding the referral.