

Shelter Children's Legal Service briefing

Responding to youth homelessness following the *G v LB Southwark* judgment

Introduction

In May 2009, the House of Lords made a landmark judgment in the case of *R (G) v London Borough of Southwark*¹ which will affect how local authorities provide accommodation and support for homeless 16- and 17-year-olds. The principal issue, as set out by the Lords, was: 'If a child of 16 or 17 who has been thrown out of the family home presents himself to a local children's services authority and asks to be accommodated by them under section 20 of the Children Act 1989, is it open to that authority instead to arrange for him to be accommodated under the homelessness provisions of Part VII of the Housing Act 1996?'

This briefing examines the impact of the judgment for those advising young homeless people and on local authority policy and practice.

- The primary duty to a homeless 16- or 17-year-old is under the Children Act and the ongoing duty to accommodate and support that young person will normally fall to the children's services authority. This can entail a range of support owed to certain children 'looked after' by a local authority, which may continue to the age of 21 (and in some cases to the age of 24).
- Children's services cannot avoid their duty to accommodate a homeless 16- or 17-year-old under section 20 of the Children Act by claiming

they were merely providing assistance using their powers under section 17, or by helping the young person to get accommodation through the homelessness legislation.

- A homeless 16- or 17-year-old who applies to a housing authority should be provided with interim accommodation under the homelessness legislation. They should then be referred to children's services for an assessment of their needs under the Children Act, unless the young person is resourceful and does not wish to be referred.
- Every local authority should already have in place a framework for the joint assessment of 16- and 17-year-olds. Current practices and protocols will need to be radically reviewed and rewritten in order to clarify the framework for assessment and to incorporate the requirements of the judgment in *G*.
- It is essential that a clear and open framework is understood by all relevant staff in children's services and housing authorities so that no young person is shuttled back and forth before they are provided with assistance.
- The judgment applies equally to unitary authorities and to non-unitary authorities.

¹ *R (on the application of G) v London Borough of Southwark* [2009] UKHL 26. The full transcript can be downloaded from tinyurl.com/gvsouthwark



The background to the case

In June 2007, when G was aged 17, he was excluded from his family home. He approached Southwark Council's housing department for assistance. They arranged mediation with his mother, but she refused to allow him back to live at home. He resorted to 'sofa surfing' and sleeping in cars.

In September 2007, G approached Southwark's children's services department² requesting an urgent assessment of his needs and immediate accommodation under section 20 of the Children Act 1989. He was placed in temporary accommodation by children's services.

Children's services' initial assessment concluded that G was not in need of accommodation under section 20 but rather he only required 'help with accommodation' which they would provide using their powers under section 17. They proposed that this would be given by referring him to the council's homeless persons' unit (HPU). The assessment also included a list of recommended referrals, not only to the HPU but to other sources of help and support, which included the children services' own family resource team which could provide ongoing social work support.

G continued to be provided with accommodation. Southwark claimed that this was provided under the homelessness legislation.³ G argued that since children's services had accepted that he was a child in need, he had in fact been accommodated under section 20, and on reaching 18 he became entitled to

the 'leaving care' duties owed to a young person who had been 'looked after' by the council's children's services department.

The legal journey

G applied for judicial review of Southwark's decision. His application failed in the Administrative Court and his appeal was dismissed in the Court of Appeal. G then appealed to the House of Lords.

The House of Lords upheld G's appeal. It held that G was accommodated under section 20, which led to the children's services assuming the duties of support owed to children who were or had been 'looked after' by the council.

The legislation

Children Act 1989

Section 17(10) of the Children Act 1989 defines that a child⁴ shall 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;
- 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.'

² Social services authorities comprise a children's services department and an adult services department.

³ Part VII of the Housing Act 1996.

⁴ Under the Children Act 1989 a child is a person under the age of 18 (s.105(1)).

Section 17 also contains a general duty to safeguard and promote the welfare of children in their area who are in need by promoting the upbringing of children by their families and providing a range and level of services appropriate to those children's needs. Such services may include the provision of accommodation (section 17(6)).⁵

Section 20(1) requires a children's services authority to provide accommodation to any 'child in need' who lacks suitable accommodation or care as a result of:

- a) there being no person who has parental responsibility for him;
- b) his being lost or having been abandoned;
- 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.'

The Lords in *G* held that section 20(1)(c) includes a child who was excluded from his or her home. The 16- or 17-year-olds who are accommodated under section 20 are 'looked after' children. After a total of 13 weeks⁶ of being 'looked after' they become 'eligible children' and then, if they cease to be 'looked after' while under 18, they become 'relevant children'. On reaching the age of 18 they will then become 'former relevant children'.

Under the **Children (Leaving Care) Act 2000** eligible, relevant and former relevant children are owed a range of duties by children's services. Depending on the young person's needs and status the duties can include accommodation, life skills, education and training, employment, specific support needs, and financial support. Some of these duties can extend until they are 21 years old, or even 24 if the child is undertaking training or education.

Housing Act 1996

Section 188 of the Housing Act 1996 provides that:

'If the local housing authority have reason to believe that an applicant may be homeless, eligible for assistance and have a priority need, they shall secure that accommodation is available for his occupation pending a decision as to the duty (if any) owed to him...'

The Homelessness (Priority Need for Accommodation) (England) Order 2002 (SI 2002/2051) provides that

- a child aged 16 or 17 who is not a 'relevant child' or owed a 'section 20' duty, and
- an 18-, 19- or 20-year-old (other than a 'relevant student'⁷), who was looked after, accommodated or fostered at any time between the ages of 16 and 18

has a priority need for accommodation under the Housing Act 1996.

Guidance

The Government has issued guidance on how local authorities should carry out their duties under the above legislation in:

- Framework for the Assessment of Children in Need and their Families (Department of Health (DoH) 2000)
- Local Authority Circular LAC (2003) 13, Guidance on Accommodating Children in Need and their Families
- Joint Working Between Housing and Children's Services (Preventing homelessness and tackling its effects on children and young people), Department of Children Schools and Families (DCSF), Communities and Local Government (CLG) (May 2008)
- The Homelessness Code of Guidance for Local Authorities, CLG (July 2006).



⁵ Paragraphs 29 and 30 of the *G* judgment refers to the Local Authority Circular LAC (2003) 13 Guidance on Accommodating Children in Need and their Families, which stresses that the power to provide accommodation under section 17 will almost always only concern children needing to be accommodated with their families.

⁶ This is from the age of 14, and must include a period after the child's sixteenth birthday.

⁷ For a definition see s.24B(3) Children Act 1989 or para.10.40 Homelessness Code of Guidance.

The judgment

Baroness Hale in giving the lead judgment referred to a previous judgment of the Lords in *R (M) v Hammersmith and Fulham LBC* [2008] UKHL 14, where it was stated:

‘The clear intention of the legislation is that these children need more than a roof over their heads and that local children’s services authorities cannot avoid their responsibilities towards this challenging age group by passing them over to the local housing authorities.’

M, a 17-year-old, had approached the housing department and requested accommodation. The Lords made it clear that after being placed in interim accommodation under the homelessness legislation she should have been referred to the children’s authority for assessment under the Children Act.

In *G* the Lords stated that determining whether a child was owed a duty under section 20 entailed a series of judgments, namely:

- Is the applicant a child?
- Is the applicant a child in need?
- Is the child within the local authority’s area?
- Does the child appear to the local authority to require accommodation?
- Is that need the result of one of the three situations outlined in section 20(1)? (see ‘The legislation’ section above.)
- What are the child’s wishes and feelings regarding the provision of accommodation?
- What consideration (having regard to the child’s age and understanding) is duty to be given to those wishes and feelings?

In the *G* case, each judgment had been assessed in *G*’s favour. The Lords held that the section 20 duty to provide accommodation had arisen and the council was not entitled to ‘side-step’ that duty by giving the accommodation a different label.

The impact of *G*

This case will have a significant impact on the treatment and assessment of homeless 16- and 17-year-olds by local authorities.

The Lords have ruled that the duty under the Children Act is primary and the ongoing duty to accommodate and assist will normally fall to the children’s services authority, and not the housing authority. Most homeless 16- and 17-year-olds will be ‘children in need’, and this assessment will, other

than in exceptional cases, trigger the section 20 duty. This will bring with it a duty to help and support the young person in the transition to independent adult living, unless the problem is relatively short-term. In addition, if the young person becomes homeless again when aged 18, 19 or 20 they will, even if they spent only one day in accommodation provided under section 20, have a priority need for accommodation under the homelessness legislation.

The judgment applies equally to unitary authorities (in which both housing and children’s services functions are concentrated in the same authority) and to non-unitary authorities.

Shelter encounters many examples of young people being told by either the housing or children’s services authority (or department) to go to the other authority’s office for assistance, with no proper referral being made and with neither authority willing to accept responsibility, often in cases where accommodation is urgently required. Every authority should already have in place a framework for the joint assessment of 16- and 17-year-olds. Current practices and protocols will now need to be radically reviewed and rewritten in order to clarify the framework for assessment and to incorporate the requirements of the judgment in *G*.



Casework implications

Although the ongoing duty to accommodate a homeless 16- or 17-year-old will fall to the children's services authority, the practical advice given is likely to be affected by whether the young person needs accommodation immediately or not (eg the young person may be able to stay with friends or relatives for a while longer). A further consideration will be the child's wishes and it is important to ensure that the young person concerned has reached an informed decision.

If the young person needs accommodation straightaway they should be referred initially (or advised to go) to the local housing authority as a homeless applicant, for interim accommodation under section 188 of the Housing Act 1996 – unless it is immediately apparent that they are a 'relevant child' – since the housing authority would at that stage have 'reason to believe' that the young person 'may be' in priority need. The young person could be referred directly to children's services, but they do not have a duty to provide immediate accommodation pending an assessment under the Children Act (although they do have the power to provide it). As such it is likely that an application under homelessness duties will provide a more effective emergency solution.

Where the housing authority provides interim accommodation, it should then make a referral to the children's services authority for an assessment under the Children Act.⁸ Where children's services accept that the client is a child in need, they will in most cases accept a section 20 duty.

Some young people may not want to be dealt with by children's services, but prefer to be accommodated by the housing authority. The adviser may then argue that there is no need for housing to refer them for assessment, or else that the assessment should take account of the young person's wishes so that the section 20 duty does not arise, and the duty remains with housing. The young person's wishes are not conclusive, but it can still be argued that they are not a child in need (or alternatively, that he or she is a child in need, but it is sufficient to provide help in finding accommodation under section 17) because the client is resourceful, and has a track record of looking after themselves and of engaging with support services and other agencies.



Advisers will find it helpful to request a copy of the local authority's joint-working protocol for the assessment of 16- or 17-year-olds. Bear in mind that some of these protocols are currently being reviewed and re-written in the light of G.

Implications for staff in children's services and housing authorities

It is essential that a clear and open framework is in place and understood by all local authority staff who work with young homeless people.

A clear protocol is essential to ensure that staff in both children's services and housing authorities are aware as to which authority/department, and which named officers, have the primary responsibility for each young person at any specific time. It is extremely important that staff know where the responsibility lies, so that in future no young person is shuttled back and forth before they are provided with assistance.

⁸ In June 2009 CLG wrote to all Chief Executives of local authorities to remind them how authorities should treat homeless 16- and 17-year-olds.

Children's services authorities may ask housing authorities for assistance 'in the exercise of any of their functions'.⁹ The House of Lords said that this did not mean that the children's services authority could avoid their responsibilities by 'passing the buck' but they could ask the housing authority to assist them, for instance, by making a certain amount of accommodation available to them to use in carrying out their duties.

Timescales for assessment

Chapter 3 of the DoH's Framework for the Assessment of Children in Need and their Families (2000) sets out guidelines for the assessment process under the Children Act.¹⁰ The guidance given on the maximum appropriate timescales for assessing children in need is as follows:

- Within one working day from receiving a referral (which can include a request for a 'child in need' assessment) or new information about an open case, children's services should make a decision about what response is required.
- Within seven working days from the point of referral, the initial assessment should be completed. A decision to gather more information constitutes an initial assessment and it can be very brief, depending on the child's circumstances. The initial assessment should address whether the child is in need, the nature of any services required and whether a further and more detailed core assessment should be undertaken. As part of any initial assessment, the child should be seen by children's services.
- Within 35 working days from the completion of the initial assessment, the core assessment should be completed. A core assessment is an in-depth assessment that addresses the central or most important aspects of the needs of a child.

The section 20 duty towards homeless young people is likely to arise for children's services during the time that they make the initial assessment of whether the child is in need. The series of judgements outlined in the *G* case will need to be assessed in the child's favour. Once the assessment process is completed and a duty under section 20 is accepted, children's services must produce a sufficiently detailed care plan or pathway plan.

⁹ Under s.27 Children Act 1989.

¹⁰ Available from tinyurl.com/dohtimescales



Practices and pitfalls to be avoided

The most common problems encountered by homeless young people who have sought advice from Shelter in similar situations to *G*'s, are flagged up below:

- **Gatekeeping** Young people may be informed that they cannot be assisted for a variety of reasons, or may be dissuaded from pursuing particular options (eg by vivid descriptions of the potentially unpleasant conditions in temporary accommodation).
- **Incomplete advice** Homeless young people are frequently not advised of the full range of options open to them. To ensure this does not occur it is also important to ensure that young people have access to independent advice.
- **Inadequate or unsatisfactory accommodation** This can occur where a homeless young person is given temporary and often unsuitable accommodation, such as bed and breakfast, or when a young person is granted a tenancy without the support needed to sustain it (eg with budgeting and independent living skills).
- **Provision of supported accommodation outside the legislation** Some housing authorities have a policy of providing a form of supported accommodation to young people as a 'housing option', without accepting a homeless application or referring the young person to children's services. This provision may indeed be suitable in the short term, but it often leaves the young person without accommodation or support of any kind when he or she reaches the age of 18. The failure to provide accommodation within the framework of Housing Act/Children Act duties must now be regarded as unlawful.

- **Intentional homelessness** If a homeless young person does not want section 20 accommodation (eg if they have been living independently for some time and can fend for themselves), this should on no account be regarded as an act of intentional homelessness for the purposes of the homelessness legislation.
- **Sidestepping of duties** Young people's supposed wishes must not be invoked to sidestep duties. For instance, authorities may seek to justify taking no further action on the grounds that the young person has turned down an offer of bed and breakfast accommodation, or some other form of temporary accommodation. An authority should take care not to dismiss a request for assistance, or to take a refusal of accommodation as a reason to discharge its duty. There may be underlying factors which gave rise to the refusal, such as insecurity or mistrust, or there may be valid reasons why the young person feels the accommodation is unsuitable. Care should be taken to address these issues and to understand the reasons for a refusal of assistance offered. Again, it is essential to ensure access to comprehensive and independent advice.
- **Delay** Children's services should ensure that a 'child in need' assessment is carried out within defined timescales, and that acceptance of the section 20 duty is not unduly delayed by the assessment process. Housing authorities must ensure that, having provided temporary accommodation, they refer young applicants to social services for assessment without delay. Protocols need to stress the need for prompt action.

The strategic implications

Robust measures in joint assessment protocols and practices are essential to ensure the problems outlined above do not recur. Current practices and protocols between authorities and departments need to be critically re-examined to ensure that referrals are made and acted upon, and that no young person is left without suitable accommodation.¹¹

The detail of each authority's joint framework or protocol for assessment of homeless young people will vary according to its particular structure, budgets and available accommodation.

However, we suggest there are common issues to be addressed:

- The assessment framework must be clear and well embedded in practice, so that a homeless 16- or 17-year-old who approaches a local authority for assistance, whether unitary or non-unitary, is not passed between housing and children's services before they are provided with assistance.
- It should be clearly stated which agencies across the authority are involved and what their roles are. Named contacts in each team should be provided to improve communication and facilitate more effective referrals.
- Authorities must ensure that a range of suitable accommodation is available, in particular accommodation that can be accessed as temporary accommodation on an urgent basis.
- Authorities must decide how accommodation is paid for. Where urgent accommodation is provided under homelessness provisions, the young person should be assisted to claim housing benefit. If the duty to accommodate is accepted by children's services there needs to be a clear understanding as to who pays the rent and how this is done. This is particularly important as, with limited exceptions, 'eligible children' and 'relevant children' are not entitled to receive income-based jobseeker's allowance, income support or housing benefit as their financial support is the responsibility of the children's services authority.¹²
- Homeless children who are not considered to have a 'local connection' with, or 'ordinary residence' in, the local authority's area must always be accommodated on an emergency basis by the authority whose 'patch' they are on. A clear referral process should be in place, so that where it is considered appropriate to refer the young person to another authority, he or she is not simply told to 'turn up' at the other authority's offices and have to tell their story all over again. Protocols should include details about how financial arrangements will operate between authorities.
- There should be a process by which young people who are already 'in the system' and who have made homeless applications since the G judgment which have not yet been decided are re-advised and re-assessed for section 20 accommodation.

¹¹ Guidance on joint working can be found in Chapter 3 of 'Joint Working Between Housing and Children's Services' (Preventing homelessness and tackling its effects on children and young people), DCSF and CLG (May 2008).

¹² Section 6 of the Children (Leaving Care) Act 2000.

- Authorities should consider the legal nature of the lettings which they grant to young people. Minors (ie those aged under 18) are unable to hold a tenancy in their own right, and authorities need to devise clear practices governing types of letting to be arranged whether on the basis of licences or tenancies held on trust.
- Annual reviews to ensure that protocols and practices respond to changes in legislation and case law.

A heavier burden will now fall on children's services authorities to provide accommodation as well as ongoing support, which is likely to increase costs significantly. Inevitably, substantial increases in resources will be needed to provide suitable accommodation and support, and for the necessary administrative structure. Resource provision, including contributions from each authority/department, subsidies and (where appropriate) welfare benefits, needs to be addressed in joint-working protocols, where financial responsibilities must be clearly identified.

Further information

We welcome feedback on this briefing. If you have any queries, or would like to refer a particular case, please contact the Shelter Children's Legal Service on 0344 515 2156.

Further and more detailed guidance on dealing with youth homelessness can be found in *Improving outcomes for children and young people in housing need: A benchmarking guide for joint working between services*.¹³

¹³ Produced by the Shelter Children's Service. This guidance and further information, including good practice examples, can be found at shelter.org.uk/childrensservice