

Just for Kids Law/CRAE submission to the Independent Care Review Call for Ideas December 2021

About this submission

Our response to the Independent Care Review's Call for Ideas is based on our response to the Case for Change and pulls out our top eight recommendations, focusing in particular on solutions in relation to homelessness and housing for care experienced children. It is informed by what we see in our advocacy and legal casework, our child rights expertise, and our direct participation work with young people with lived experience. The young people involved in our Care Leavers for Housing Rights campaign have fed in their own ideas.

About Just for Kids Law and the Children's Rights Alliance for England

Founded in 2006, Just for Kids Law (JfKL) works with, and for, children and young people to hold those with power to account, and to fight for wider reform by providing legal representation and advice, direct advocacy and support, and campaigning to ensure children and young people in the UK have their legal rights and entitlements respected and promoted and their voices heard and valued.

The Children's Rights Alliance for England (CRAE) merged into Just for Kids Law in 2015 and works with over 100 members to promote children's rights and monitor government implementation of the UN Convention on the Rights of the Child. CRAE was founded in 1991.

Contact details: For further information, please contact Natalie Williams, Head of Policy and Public Affairs (Child Rights): nwilliams@crae.org.uk

1. Extend priority need to 25 for homeless care leavers

What is your idea?

The Government should amend the Homelessness (Priority Need for Accommodation) (England) Order 2002 to extend priority need to include all care leavers under the age of 25.

Care leavers aged 18 to 20 automatically have priority need under homelessness legislation until they turn 21 and have to prove their vulnerability. We [Just for Kids Law] see in our [their] case work that local authorities often ask for specific expert evidence of this vulnerability, which can be hard for a care leaver to gather without the help from a housing professional or lawyer. It is unlikely many would know that they can question this decision and how to do so without getting professional help.

Given the extension of other corporate parenting duties in the Children and Social Work Act 2017 for care leavers up to age 25, it is difficult to understand the need for a cut-off age of 21. A Priority need test has been abolished altogether in Scotland since 2012, which removes a key barrier for care leavers, and the Welsh Government is now also considering reforming priority need, including for care leavers. In England, priority need has recently been extended to survivors of domestic abuse to remove the burden on victims of

having to prove they meet the vulnerability threshold. The same needs to happen for care leavers who by their very nature should be considered vulnerable.

What impact do you hope this will achieve?

Being care experienced means a young person is significantly more likely to experience homelessness, one third of care leavers experience homelessness in the first two years after they leave care.¹ As such it is a key barrier for many care leavers seeking to start their adult lives on the right track. Extending priority need to homeless care leavers over 21 will remove this additional barrier and prevent them ending up homeless and without the entitlements and longer-term, stable accommodation they would be owed under homelessness legislation.

The vast majority of homeless care leavers aged 21 and over will meet the vulnerability test but have to navigate this additional hurdle at the same time as they are being threatened with homelessness, negotiating with friends to sleep on their sofas or sleeping on the streets. Older care leavers should not be made to prove their vulnerability by taking part in invasive psychiatric assessments, paying their GP for a letter laying out their health issues or recounting their past traumas multiple times to statutory services.

2. Abolish intentionality for homeless care leavers

What is your idea?

The Government should remove the test of intentional homelessness for all care leavers, up to the age of 25.

A key barrier faced by care leavers is one of intentional homelessness. Applicants can be found to be 'intentionally homeless' if they have left accommodation that the local authority deemed suitable, even if the young person was unhappy with or felt unsafe in the accommodation, if they fall behind on their rent and get evicted, or if they become homeless as a result of having been in prison. Someone who is deemed intentionally homeless will not be owed a main housing duty by the local authority and will not be supported into long-term accommodation, even if they have priority need otherwise.

Although the Homelessness Code of Guidance states that housing services should avoid intentionality decisions for care leavers aged 18-25, there is no clear duty on local authorities to do this and concerns have consistently been raised that intentionality is being used as a way of gatekeeping care leavers. In Wales, in 2019 the Government has ended intentional homelessness for young people under 21 and for care leavers aged 21 to 24. Some action has already been taken at the local level in England, for example, Barnsley council and Greater Manchester Combined Authority have decided not to apply the intentionality criteria to their care leavers. However, care leavers should not be subjected to a postcode lottery on this major barrier to accessing support from housing services.

What impact do you hope this will achieve?

Care leavers are more likely to be found intentionally homeless, as they often have no support system in place to help them avoid rent arrears for example. In our [Just for Kids Law's] experience, care leavers also often have multiple vulnerabilities and may need accommodation, which is tailored to their specific circumstances, but often do not get a choice of accommodation options or can be offered a placement that exacerbates their mental health issues or puts their safety at risk, for example, if they have been involved in gang violence.

¹ All-Party Parliamentary Group (APPG) for Ending Homelessness (2017) [Homelessness prevention for care leavers, prison leavers and survivors of domestic violence](#)

Removing the possibility for care leavers to be made intentionally homeless will ensure they get the protections and entitlements that should be afforded to them as care leavers who are homeless and crucially the longer-term accommodation that will enable them to have a secure future.

3. Provide independent advocacy for all children and young people in contact with statutory services

What is your idea?

Independent youth advocacy should be extended to all children and young people who come into contact with statutory services and an 'active' (opt out) advocacy offer should be put in place, similar to Wales.

Though children in care have a legal right to be heard and have an advocate, this does not currently apply to all children in England in contact with statutory services. The UN Convention on the Rights of the Child (CRC) states in article 12 that all children have a right to have their views taken into account when decisions about their lives are made. The 'active' advocacy offer in Wales means that when children enter care, or at other key moments in their care journey, they are automatically connected with an independent advocate who explains advocacy and offers their services.

The Government will be consulting on updated advocacy standards in 2022 and the outcomes of this must link with the recommendations that come out of the Care Review. Children and young people must be at the heart of this consultation, in keeping with the purpose and values of advocacy.

What impact do you hope this will achieve?

There is patchy access to good quality, independent youth advocacy across England. Currently, legal provisions for youth advocacy are spread out across laws and regulations and children's entitlement to advocacy are vague and limited to only certain groups. We find that children and young people are not actively informed of their rights and entitlements at all stages of their involvement with the care system and do not know what mechanisms are available to them if they have a complaint.

Youth advocacy must be led by the voices, wishes and feelings of the individuals they represent and not focused on the person's best interests. This is not always achieved by commissioned services as they can be too limited by their contracts (e.g. a time limit on the support provided, funding for specific groups of young people or situations) or that they are not independent from social services so children are unable to trust them.

Extending independent advocacy for all children in contact with statutory services would ensure they are all aware of their rights and entitlements, that their voices and wishes and feelings are heard and that the UK is able to effectively adhere to its obligations under the CRC.

4. More support for homeless 16-and-17 year-olds

What is your idea?

Homeless 16-and-17-year-olds are not being given the support they are entitled to keep them safe and are frequently refused support under section 20 of the Children Act as 'looked after' children. There are three areas where the Government can strengthen support in this area:

1. *The Government should amend the joint statutory guidance to clarify that as a default position, all homeless children should be housed under section 20 of the Children Act unless they have explicitly said they do not want to be after being made fully aware of their rights and entitlements.*

2. *Homeless 16- and 17-year-olds should always have access to an independent advocate to support them to make decisions about the type of support they receive from the local authority.*
3. *The Government should consider creating a new status of 'vulnerable 16- or 17-year-old' for those children who refuse to become accommodated under section 20, in order to allow greater flexibility of responses, but ensure the same level of entitlements and support as 'looked after' status. 'Vulnerable 16- or 17-year-olds' should have a pathway plan drawn up and receive care leavers' entitlements after 18. They should also be able to change their minds and decide to become looked after at any point.*

More than half are housed in unregulated settings but the Government's planned reforms will not benefit this group of children. We support the Keep on Caring submission to make it law that every looked after child receives care until they are 18.

What impact do you hope this will achieve?

FOIs we carried out in June 2020 found around 2,500 children aged 16 -17 are housed by their local authority each year without becoming 'looked after' [for more information, see Not in Care, Not Counted (2020) Just for Kids Law]. This means they may be left to fend for themselves when they turn 18 and not have the rights they would be entitled to as a care leaver had they been 'looked after' and as a result often end up homeless. This figure does not include children who are gatekept – sent away without being accommodated – which Just for Kids Law's experience suggests is likely to be a significant number of children.

With children's services being under severe financial pressures, in our experience many of these children are being nudged towards being accommodated under the Housing Act or section 17 of the Children Act as it is a lower-cost option for local authorities. Under the joint statutory guidance, children in this situation should have access to independent advocacy to help them make a fully informed decision, but there is no clear duty on the local authority to actively support this and access to youth advocacy across the country is patchy.

5. Ban unregulated accommodation for children up to 18

What is your idea?

Make it law that every looked after child receives care until they are 18.

In February 2020, the DFE began a public consultation on regulating semi-independent and independent accommodation for children in care and care leavers, following widespread and serious concerns, which were taken up by BBC Newsnight and other media outlets. In September 2020 the then Children's Commissioner recommended that the use of semi-independent and independent provision be made unlawful for all children in care: "*No child under the age of 18 should be placed in an unregulated setting. All children aged under 18 should receive care, rather than [only] support*".

Under domestic and international law these young people are still children. In no other circumstance would we condone a child being left without care. This type of accommodation needs to be regulated by Ofsted. This could be achieved through adapting the children's homes regulations or the Scottish Health & Social Care Standards.

Placing children in this kind of accommodation is often the result of insufficient suitable placement options being available. It also relates to a high number of children entering the care system at a later age and is often temporary, resulting in frequent moves.

Therefore, we call on the Secretary of State to have a sufficiency duty in respect of children's care and accommodation (based on the duty in NHS Act 2006), ensuring that central government properly funds local authorities so they are able to care for, protect and meet the needs of all children in care.

What impact do you hope this will achieve?

Providing care to 16-and-17-year-olds will benefit approximately 6,000 16-18 year olds in semi-independent and independent accommodation. All children need care for their well-being and development, and this can be provided alongside respect for growing autonomy. By guaranteeing that care is available until 18, young people will have the chance to move into adulthood at a pace that suits their needs and potentially reduces the level of support they need post 18.

Autonomy and resilience cannot be developed by leaving a child alone in a flat to fend for themselves. They need to know that there is someone there they can rely on, who can encourage, comfort and care for them in all situations.

By putting a Sufficiency Duty on to the Secretary of State it could ensure that all young people in care will be guaranteed a placement that fully meets their needs. This in turn will reduce the levels of placement breakdown which are known to affect long-term outcomes for young people.

This idea is endorsed by the Alliance for Children in Care and Care Leavers and Keep on Caring to 18 campaign which we sit on the steering group of.

6. Uphold the principles and provisions of the CRC

What is your idea?

The care review should uphold the principles and provisions of the United Nations Convention on the Rights of the Child (UNCRC) through its working methods, analytical framework and proposals for change.

This idea can be achieved if:

1. The review promotes and strengthens children's rights. A published Child Rights Impact Assessment of its own proposals and recommendations would provide an assurance mechanism for this.
2. Children's rights standards (as expressed in domestic and international law) form the framework of the review's recommendations.
3. The review refrains from making any recommendations which dilute or delete existing legal protections which children, young people (including care leavers) and families rely upon.
4. Children's meaningful and effective participation is at the heart of the review, informed by the Committee on the Rights of the Child's comprehensive guidance on implementing Article 12 of the CRC, the child's right to be heard and taken seriously. This applies to both the review's working methods and to the recommendations it makes for strengthening children's rights: all children have the right to express their views freely, to have these given due weight and to be heard and

represented in all administrative and judicial proceedings when decisions are being made about them.

5. Children and families benefit from increased legal entitlements and social protection because of this review.
6. The review champions government systems and structures which work for children and their families, and all those who care for, protect and support children and young people.

What impact do you hope this will achieve?

If the UNCRC is embedded in the review's proposals, it will be building on solid foundations of children's rights that are championed across the children's sector and known to improve and safeguard the lives of children and young people in England.

The review team should also make recommendations to government that also meaningfully enhance and embed children's rights within children's social care. The principles of a child rights-based approach as set out by UNICEF also reveal the intended impact of the measures listed in this idea:

1. Dignity
2. Interdependence and indivisibility
3. Best interests
4. Participation
5. Non-discrimination
6. Transparency and accountability
7. Life, survival and development Read more: <https://www.unicef.org.uk/child-friendly-cities/crba/>

Guaranteeing these principles would make a significant impact for all children and young people affected by the care review and its recommendations. This approach is supported across the sector and endorsed by the Alliance for Children in Care and Care Leavers.

7. Adequately fund the children's social care system

What is your idea?

The children's social care system should urgently receive additional ring-fenced funding. Any reforms suggested by the Care Review must be sufficiently funded or they will put more pressure on an already stretched system.

Reforms should also not be taken in isolation – the children's social care system intersects with housing and homelessness, youth justice, education, health (including mental health), social welfare which all also require investment and additional funding.

The number of children in care has risen by 24% since 2010 and is predicted to rise to almost 100,000 by 2025 – an increase of more than a third within just one decade. Children who enter the care system are also typically older with more complex needs. At the same time, local authority spending on early intervention services for children has fallen dramatically by 48% since 2010, with the cost of supporting a looked-after child increasing by more than 20%. This has led to huge cuts to universal early help services such as youth clubs, children's centres but also children and young people's mental health and other preventative services. Additional duties from the Children and Social Work Act have also not been appropriately resourced and the Covid -19 pandemic has put even more pressure on children's services.

Our experience is that very often these restricted resources lead to a culture of gatekeeping within social services to manage limited funding, which can lead to children not being effectively supported or not supported until crisis point, with sometimes devastating consequences.

What impact do you hope this will achieve?

Adequately funding early intervention within the children's social care system will enable the system to better function as intended, will back fill a decade of underfunding and improve the lives of thousands of the growing numbers of vulnerable children in contact with the social care system. Additional duties or reforms coming out of the Care Review cannot be added to an already creaking system without breaking it even further.

The benefits of early intervention to both children and the long-term impacts on society itself are well documented and would prevent professionals only intervening when the situation is at crisis point and has often already caused irreparable damage to the child. It is also well documented that this will save money for local authorities and the Government in terms of spending on housing, benefits, drug and alcohol, mental health support, and the criminal justice system etc.

8. Provide social housing for out of area care leavers

What is your idea?

Legislation should be amended so all care leavers have the highest priority for social housing in all local authorities, particularly when placed out-of-area as a child.

Central and local government must urgently address structural issues in social housing supply and availability and bring benefits and wages in line with actual living costs.

We commonly see young people placed out-of-area when they were looked after children and as adults are unable to access social housing in the local authority where they live. Once 18, they're not automatically eligible for leaving care support in their local authority of residence, even if they've lived there for several years and have support networks there. In some cases, this means they don't have priority for social housing even though 'local' care leavers would.

Local authorities retain broad powers to establish which groups have priority for social housing, within the limits of the Housing Act 1996. As social housing stock is severely limited across England, only those on the highest priority bands can realistically expect to be allocated a property. Statutory guidance indicates the category of people in the Housing Act 1996 who need to move to social housing on "welfare" grounds encompasses care leavers. However, this doesn't translate to all care leavers having priority for social housing in all local authorities. Local authorities' control over allocation policies, complicated rules around types of properties care leavers are entitled to and availability of social housing means care leavers often cannot access suitable social housing where they live.

What impact will this achieve?

For care leavers being forced to move to a local authority where they have not lived for many years, due to being placed out-of-area when still a child, can mean uprooting their lives and leaving their support network behind at an age when they would normally be relying on friends and trusted adults during their transition to adulthood. This can have detrimental consequences for young people, sometimes pushing them into the criminal justice or mental health system, which has both a long-term personal impact and cost to society. Once care leavers have developed a connection to an area, particularly through out of area placement, it is crucial they are able to stay there