



# Lancashire Joint Protocol 2017-2020

Joint Working Arrangements for  
Homeless 16/17 year olds

31 January 2017



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# 1. Introduction

It is widely recognised that young people are generally best placed living with their families. Every effort will be made to assist young people to remain in their family home through a range of interventions. However, it is acknowledged that there are situations where a young person cannot remain at home and alternative accommodation and ongoing support must be provided.

It has been agreed between Lancashire County Council and the 12 District housing authority partners to refresh the existing Joint Protocol and Flowchart. This is due to a wide range of new legislation being issued in relation to young people as well as the need to respond to a changing environment regarding support and accommodation for vulnerable young people. It is the aim of the Joint Protocol to ensure that both Children's Social Care and Housing professionals working with young people aged 16/17 who require accommodation do so in a consistent way across Lancashire and that all professionals involved in this work are up to date with both children and family law as well as housing and homelessness legislation, thus ensuring a swift and efficient response to their needs. The Protocol outlines the joint responsibilities of Children's Social Care and District Housing Authority partners concerning the assessment of need and provision of accommodation services to homeless 16/17 year olds.

Lancashire County Council and the 12 District Housing Authority partners will work together and with young people and their families where they are not able to return home for a variety of reasons, to ensure that accommodation and support are organised swiftly. Where appropriate, additional organisations will also be involved to enhance outcomes for young people and support relationships within families.

The Joint Protocol is aimed at young people aged 16 or 17 who present as homeless. However, there may be other opportunities for young people, depending on their circumstances, to access support via the new Positive Pathway Model. Professionals involved with the young person will be best placed to ensure that individuals receive the very best information and support.

In addition to the Joint Protocol, there are accompanying guidance notes for professionals. This includes a flowchart to illustrate the route that young people could take to access support.

## 2. Principles

- It is the responsibility of all partners/agencies to keep children and young people safe.
- Prevention of homelessness and support to remain or to return to the family home where this is safe and appropriate will be the primary focus of the work, as this is likely to be in young people's best interests. However, this work will not divert the County Council and the District Housing Authorities from meeting their statutory duties when young people cannot return home.
- Bed and breakfast accommodation will not be used to accommodate young people, even in emergency situations. Alternatives **MUST** be sought. This is as a direct response to the Ombudsmen Report that was issued to Lancashire County Council in 2015. Bed and Breakfast accommodation is not suitable accommodation for any young person aged 16/17.
- Young people who are 16/17 and at risk of homelessness may need short stay or longer stay accommodation if their homelessness cannot be prevented. Due to their age and level of vulnerability there is a likelihood that the initial housing and support route a young person takes may breakdown. Alternative types of accommodation and support must be explored, involving as many agencies as necessary to ensure that appropriate arrangements are provided and that partners involved are sensitive to the needs of young people and knowledgeable about the legal position. If a pathway does breakdown, Children's Services will need to undertake another assessment, as necessary.
- In all cases, any Children's Social Care Assessment or CAF should be shared with the consent of the young person, with District Housing Officers so that the most appropriate support and accommodation can be provided to the young person.
- Young people must be consulted with at every stage of their pathway to ensure that their needs and views are fully considered.
- Unless there are clear reasons not to do so, the importance of work with the parents or those with parental responsibility of any 16/17 year old who approaches being at risk of homelessness underpins this protocol.
- Assessments must be completed within the necessary timescales.
- A young person's wish not to be taken into care should not affect their Section 17 children in need entitlements to support which should reflect, as far as possible, the support they would receive as if they were being looked after.

For Children's Social Care, Child and Family Assessments will be undertaken within the agreed timescales (see **10. Joint Assessment**, below)

- In all cases, young people must be regularly communicated with to ensure that they are comfortable with the provision made and know who to contact if they are not.
- Due to the proposed new homelessness legislation and welfare reform changes from 2017 onwards, it is vital that the Joint Protocol is reviewed and revised, to respond to national legislative and policy changes.

### 3. Purpose of the Joint Protocol

- To state and clarify the statutory responsibilities of Lancashire County Council and the 12 District Councils.
- To set out the local operational delivery mechanisms to meet statutory responsibilities.
- To promote joint working between all partners, including public bodies as well as the Third Sector and housing associations.

At the Court of Appeal, during the case of R (on the application of TG) v London Borough of Lambeth [2011] EWCA Civ 526, Lord Justice Wilson urged all councils to formulate a joint approach to the assessment of young people who are homeless in the hope that fewer children in the future are let down in the manner in which the child who brought the claim had been.

### 4. Functions defined in the Protocol

- Wherever possible to provide early help and prevention services to support young people to stay safely within their families or reunite them with their families.
- To better safeguard young people who are at risk of, or who are homeless.
- To ensure that by working together young people receive the right service at the right time.
- To establish a practical, easy to use system in order to place young people in suitable and safe accommodation appropriately.
- The protocol defines the jointly agreed pathways which young people can use to get housing and support should they be homeless or at risk of homelessness and in need of early help or prevention support.

### 5. Statement of Commitment

Lancashire County Council, District Councils and Third Sector providers are committed to improving the outcomes of young people through Lancashire Children and Young People's Trust and seek to deliver the following key outcomes for young people:

- **To feel safe**
- **To do well**
- **To be happy**
- **To be healthy**
- **To be listened to**

This clearly commits partners to finding accommodation and support solutions for vulnerable young people affected by or at risk of homelessness. The Joint Protocol and the Young People's Housing and Homelessness Strategy will focus on developing new ways of working together, promoting strong joint planning and commissioning of quality services for young people and families.

To further reinforce our joint commitment, all partners are represented at the Lancashire Housing Reference Group which meets regularly to ensure that new and innovative ways of working are explored and to discuss complex cases that may need a tailored response. For specific, local issues, Children's Social Care representatives will host locality meetings with District Housing colleagues and providers to ensure that joint assessments, placements and monitoring are appropriate and responsive.

## 6. Southwark Judgement

### The Legal Context

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

- i) 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*?
- ii) 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*.
- iii) 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".
- iv) 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.

- v) 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".
- vi) 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. Young people aged 16 or 17 are still children and as such, all agencies have duties and responsibilities to act together to protect them<sup>1</sup> if they are suffering, or likely to suffer, significant harm.

Key extracts from this statutory guidance are:

- Para 2.13 "...children's services should be the lead agency with regard to assessing and meeting the needs of 16 and 17 year olds."
- Para 2.28 "An initial assessment should be carried out involving interviewing the young person and family members and making enquiries with other agencies...the lead agency will be children's services, given their responsibilities for children in need in their areas."<sup>2</sup>
- Para 2.23 "There can be no doubt that where a young person requires accommodation as a result of one of the factors set out in the Section 20(1) (a) to (c) or Section 20(3) then that young person will be in need and must be provided with accommodation. As a result of being accommodated the young person will be Looked After" (except if a private fostering arrangement is in place where the parent arranges a foster carer and Children's Services simply approve the placement).

- Para 2.16 “where a 16 or 17 year olds seeks help or is referred, and it appears that he or she has nowhere safe to stay the night, then Children’s Services must secure suitable emergency accommodation for them” and additionally “this means that the young person will become Looked After (under s. 20(1)) whilst their needs are assessed.
- Para 2.48 “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 staff conducting the assessment must provide realistic and full information about the support that the young person can expect as a looked after child and, subsequently, as a care leaver. Children’s services should also ensure that the young person receives accurate information about what assistance may be available to them, including from housing services under Part 7 of the 1996 Act, if they do not become looked after, and how any entitlement for assistance under Part 7 will be determined. In particular, the possible risk of becoming homeless intentionally in future, and the implications of this for further assistance with accommodation, should be made clear to the young person. This information should be provided in a ‘child 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.”
- Para 2.50 “Young people should have access to independent advocacy and support to assist them in weighing up the advantages and disadvantages and coming to a balanced decision.”<sup>3</sup>
- Para 2.53 “Where a 16 or 17 year old child in need wishes to refuse accommodation offered under Section 20 of the 1989 Act, children’s services must be satisfied that the young person:
  - has been provided with all relevant information
  - is competent to make such a decision”

Para 2.55 “The powers of local authorities to provide accommodation under Section 17 cannot be used to substitute for their duty to provide accommodation under Section 20(1) of the 1989 Act to homeless 16 and 17 year olds who are assessed as being children in need following the process described above.

## 7. Legislation

Homelessness for young people aged 16/17 is a complex issue that is covered by the Children Act 1989; The Housing Act 1996 and the Homelessness Act 2002. The Children Act 1989 is primary law, alongside other regulations and guidance. The legal powers and duties within legislation have been challenged in court and in many cases this has helped to clarify the law - for example the 2009 G v Southwark Judgement. In addition Ombudsman reports and Serious Case Reviews further add to understanding through commenting on and making recommendations in relation to legal compliance and good practice.

In 2008, the Department for Communities and Local Government (DCLG) and the Department for Children, Schools and Families (DCFS) published guidance on Joint Working between housing and children's services. The guidance sets out good practice in working within local authorities to commission and provide appropriate accommodation for young people including care leavers and homeless 16/17 year olds. (Further information can be found below)

Additional joint statutory guidance was published in 2010 in relation to the G v Southwark Judgement (see above).

## Children's Legislation

### Children Act 1989

The Children Act 1989, section 20

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 him;
  - (b) his being lost or having been abandoned; or
  - (c) the person who has been caring for him being prevented (whether or not permanently, and for whatever reason) from providing him with suitable accommodation or care.
- (3) Every local authority shall provide accommodation for any child in need within their area who has reached the age of sixteen and whose welfare the authority consider is likely to be seriously prejudiced if they do not provide him with accommodation.
- (4) A local authority may provide accommodation for any child within their area (even though a person who has parental responsibility for him is able to provide him with accommodation) if they consider that to do so would safeguard or promote the child's welfare.

If a young person is accommodated under section 20, they become a 'looked after child' 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 plan must address accommodation and support with named contacts, timescales for action and review dates. If a young person is looked after for 13 weeks or more after their 14<sup>th</sup> birthday and is still looked after on or after their 16<sup>th</sup> birthday they become 'eligible' in terms of leaving care entitlement. For those who are looked after for less than the prescribed 13 weeks but are looked after after their 16<sup>th</sup> birthday they will still be entitled to some leaving care services as a 'qualifying' young person. Duties may also be owed to 'relevant children' and 'former relevant children' (defined in section 23 of the Act, below).

The Children Act 1989, section 23

Advice and assistance for certain children and young persons

23A The responsible authority and relevant children.

- (2) In subsection (1) "relevant child" means (subject to subsection (3)) a child who—
  - (a) is not being looked after;
  - (b) was, before last ceasing to be looked after, an eligible child for the purposes of paragraph 19B of Schedule 2; and
  - (c) is aged sixteen or seventeen.

- 23C Continuing functions in respect of former relevant children
- (1) Each local authority shall have the duties provided for in this section towards—
- (a) a person who has been a relevant child for the purposes of section 23A (and would be one if he were under eighteen), and in relation to whom they were the last responsible authority; and
  - (b) a person who was being looked after by them when he attained the age of eighteen, and immediately before ceasing to be looked after was an eligible child,
- and in this section such a person is referred to as a “former relevant child”.

The Children Act 1989, section 17

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

- (1) It shall be the general duty of every local authority (in addition to the other duties imposed on them by this Part) —
- (a) to safeguard and promote the welfare of children within their area who are in need; and
  - (b) so far as is consistent with that duty, to promote the upbringing of such children by their families,
- by providing a range and level of services appropriate to those children’s needs.
- (2) For the purpose principally of facilitating the discharge of their general duty under this section, every local authority shall have the specific duties and powers set out in Part 1 of Schedule 2.
- (3) Any service provided by an authority in the exercise of functions conferred on them by this section may be provided for the family of a particular child in need or for any member of his family, if it is provided with a view to safeguarding or promoting the child’s welfare.
- (10) For the purposes of this Part a child shall be taken to be in need if—
- (a) he is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him of services by a local authority under this Part;
  - (b) his health or development is likely to be significantly impaired, or further impaired, without the provision for him of such services; or
  - (c) he is disabled,
- and “family”, in relation to such a child, includes any person who has parental responsibility for the child and any other person with whom he has been living.

## Housing and Homelessness Legislation

**Housing Act 1996** (as amended by the Homelessness Act 2002) Parts vi and vii set out the legal framework for allocating housing and assisting homeless people.

The Homelessness Legislation acts as a safety net for any homeless 16/17 year old who are assessed as not being owed a duty under section 20 of the Children Act 1989. The young person will be assessed through the five Homelessness Tests as outlined.

The four statutory Homelessness Tests are:

1. Is the applicant eligible for assistance?
2. Is the applicant homeless?
3. Is the applicant in priority need?
4. Is the applicant intentionally homeless?

And the non-statutory test, at the discretion of each district council, is:

5. Does the applicant have a local connection?

Housing Act 1996 (as amended by the Homelessness Act 2002) - Parts VI and VII set out the legal framework for allocating housing and assisting homeless people.

**Section 175:** A person is homeless if they have no accommodation available in the UK or elsewhere, or if they cannot secure entry to it, or it is not reasonable for them to occupy it.

**Section 189:** A person is in priority need if they or their partner are pregnant, have dependent children, are aged 16 or 17 years old, are vulnerable due to old age, mental illness or handicap or physical disability or other special reason, or are homeless or threatened with homelessness as the result of an emergency.

**Section 191:** A person becomes homeless intentionally if they deliberately do, or fail to do, something that causes them to lose their accommodation in circumstances where it would have been reasonable for them to have continued to occupy that accommodation.

CLG Guidance on the Housing Act 1996 (as amended by the Homelessness Act 2002) recommended that housing and CSC should have joint protocols in place to ensure that each play a full role in providing support to 16 and 17 year olds.

## 8. Lancashire Continuum of Need

The Lancashire Continuum of Need and Thresholds document have been recently updated and work towards the newly created 'Risk Sensible Assessment Model'. The Continuum underpins the Common Assessment Framework which have also been updated.

The Continuum has been developed to provide help and guidance to practitioners at all levels who work with children, young people and their families. It allows practitioners to identify levels of need and risk through the use of indicators related to outcomes. The CON also supports practitioners to determine how to best provide support by providing guidance as to what assessment and planning procedures to follow at each level to meet or prevent escalation of need and support de-escalation from statutory services. [Click here to view](#)

## 9. Early help

See Lancashire's Wellbeing Prevention and Early Help Service Homeless Offer for 16/17 yr olds.

## 10. Joint Assessment

The County Council and the District Housing Authorities have agreed to use a joint assessment process, to ensure that a fair and equitable approach to access to services is available across county and that 16/17s do not have to go through a number of separate assessments, but experience a more seamless approach to assessment of their needs and circumstances.

The joint assessment process aims to ensure a joined up and robust response to homeless young people aged 16 and 17 years and to facilitate access to appropriate accommodation/support package to meet needs.

Whilst powers of local authorities to provide accommodation under Section 17 cannot be used to substitute for their duty to provide accommodation under Section 20(1) of the 1989 Act to homeless 16 and 17 year olds who are assessed as being children in need, this protocol provides for an alternative approach for those young people that are remaining in the family home or network but need some support in order to do so as well as those who do not wish to become looked after but are not able to remain in or return to the family home.

### Children's Social Care, Child and Family Assessments

For Children's Social Care, Child and Family Assessments, there is a 10 day checkpoint from Day 1 of involvement with the young person. There is another checkpoint at Day 30 for complex cases. The maximum length of time that an Assessment should take is 45 days. The length of time of any assessment should not preclude any young person who is homeless from action being taken to ensure they have safe accommodation whilst the assessment is undertaken, whether this is provided by a family member, appropriate friend or the local authority. This assessment is completed during and after the young person has already been placed into safe accommodation on a short term or emergency basis.

## 11. Flowchart

See the Joint Working Protocol for Homeless 16/17 Year Olds January 2017 (Flowchart).

## 12. Information Sharing

Sharing information about children, young people and their families is essential to enable early intervention and support for young people who need help, but it is important that information is shared in a way which respects individual's rights. The Joint Protocol will use the Children and Young People's Trust guidance for Information Sharing as all local authorities and partners have signed up to this commitment. For further information, please see:

[Lancashire Children and Young People's Trust - Information Sharing Guidance](#)

## **13. Strategic Support of the Protocol**

The Lancashire Joint Protocol will be supported by the following:

- Young People's Housing and Homelessness Strategy 2016-2020
- CLG Homelessness Code of Guidance for Local Authorities (2006)
- The Lancashire Positive Pathway Model
- Care Leavers Support and Accommodation Framework
- Care Planning Regulations
- Lancashire Workforce Development Programme
- Joined up support and management of young people in emergency and short term accommodation
- Lancashire Children's Trust Board
- Lancashire County Councils' CLA and Leaving Care Strategies
- Locality Housing Groups
- District Homeless Forums
- District Homelessness Strategies and Action Plans
- Providers of Commissioned Support and Accommodation

## **14. Governance Arrangements**

The Lancashire Housing Reference Group will monitor the Joint Protocol on a bi-monthly basis. Initially, the Protocol will also be subject to review through the Locality Groups and information will be fed into the Supported Accommodation and Learning Offer Programme Board (SALO) who will be able to offer support and agreement to any necessary modifications to the Protocol.

## 15. Appendix

### Appendix I: Signatories

The following organisations commit to the principles and purpose of this protocol. They are all members of the Lancashire Housing Reference Group.

Organisation	Name and designation	Signature	Date
Burnley Borough Council	Wilma Waddingham Housing Needs Manager		
Chorley Council	Fiona Daniels Housing Options and Support Manager		
Fylde Borough Council	Kirstine Riding Housing Services Manager		
Hyndburn Borough Council	Denis Aldridge Housing Advice and Homelessness Manager		
Lancaster City Council	Sharon Parkinson Principal Housing Options Manager		
Pendle Borough Council	Wayne Forrest Housing Needs Manager		
Preston City Council	Bev Lyon Senior Housing Advisory Manager		
Ribble Valley Borough Council	Rachael Stott Housing Strategy Manager		
Rossendale Borough Council	Elizabeth Usher Housing Options Officer		
South Ribble Borough Council	Suzanne Ravenscroft South Ribble Borough Council		
West Lancashire Borough Council	Laura Lea Homelessness and Private Sector Housing Manager		
Wyre Council	Pamela Holroyd Housing Options Team Leader		

**Appendix I: Signatories (continued)**

<b>Organisation</b>	<b>Name and designation</b>	<b>Signature</b>	<b>Date</b>
Barnardo's	Sian Davis Children's Services Manager		
Positive Action in the Community	Claire Bennett Charity Manager		
Lancashire County Council	Diane Booth Head of Service – East Children's Social Care		
	Tony Morrissey Head of Service – Central Children's Social Care		
	Stasia Osiowy Head of Service – North Children's Social Care		