



Children's
Rights Alliance
for England

Standing up for kids

JUST FOR KIDS



Written evidence from Just for Kids Law/CRAE to the civil society alternative report to the Committee on Economic, Social and Cultural Rights

About this submission

Our response to the call for evidence for the civil society alternative report to the Committee on Economic, Social and Cultural Rights focuses on two areas: children who are excluded from school, and children at risk of homelessness in the social care system. 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.

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.

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1. Homelessness affecting children in the social care system

The International Covenant on Economic, Social and Cultural Rights (ICESCR) supports the right to adequate housing for all and to the continuous improvement of these living conditions. It also recognises the special measures of protection and assistance for all children and young people. However, for children in the care system and young care leavers, there are still many barriers that stop them from accessing their right to housing.

Although the relationship between being in the care system and homelessness is well-known, significant gaps in support remain, both in national and local policy and practice. Below are three barriers faced by homeless 16- and 17-year-olds and young care leavers in accessing housing.

Homeless 16- and 17-year-olds

Most homeless 16- and 17-year-olds who approach their local authority for support should be accommodated by their children's services team under section 20 of the Children Act as a looked after child. However, we find that many of the children we work with are instead housed under the Housing Act or section 17 of the Children Act. The statutory guidance states that section 17 should only be used as a last resort.¹

¹ Ministry of Housing, Communities and Local Government and Department for Education (2010, updated 2018) *Prevention of homelessness and provision of accommodation for 16 and 17 year old young people who may be homeless and/or require accommodation*

Being accommodated under section 20 means that the child becomes a looked-after child after 24 hours and is then entitled to a social worker and ongoing support from their local authority. A child in care will become a care leaver upon turning 18 and will be eligible for pathway planning and ongoing support up to age 25. They will also have priority need under homelessness legislation, which means they will be more likely to be supported into long-term housing by their local authority should they become homeless after they turn 18. Children who are accommodated under the Housing Act or under section 17 of the Children Act are entitled to much less support – in particular, a child accommodated under the Housing Act is not legally entitled to a social worker or any form of support from the local authority. They also do not have any entitlements once they turn 18, including not having priority need. Without this support, often these children become homeless again once they turn 18.²

There is an exception in the statutory guidance which allows local authorities to house 16- and 17-year-old under the Housing Act or under section 17 of the Children Act instead of as a looked-after child, but this must be what the child decides after being fully informed of their options and their consequences. Unfortunately, with austerity and children's services being under severe financial pressures, in our experience many of these children are being pushed towards being accommodated under the Housing Act or section 17 of the Children Act as it is a lower-cost option for local authorities.

Recommendations:

- **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.**
- **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.**

Intentional homelessness

Care leavers can be found to be 'intentionally homeless' if they have left accommodation that the local authority deemed suitable, even if they were unhappy with or felt unsafe in the accommodation, fell behind on their rent and got 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 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. 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.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/712467/Provision_of_accommodation_for_16_and_17_year_olds_who_may_be_homeless.pdf

² More case studies are available in: Just for Kids Law (2020) *Not in Care, Not Counted*

<https://justforkidslaw.org/sites/default/files/fields/download/Just%20for%20Kids%20Law%20-%20Not%20in%20care%20C%20not%20counted%20-%20June%202020.pdf>

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 experience, care leavers often have multiple vulnerabilities and may need accommodation tailored to their specific circumstances, but often do not get a choice or are offered a placement that exacerbates their mental health issues or puts their safety at risk e.g. if they have been involved in gang violence.

We were pleased to see the removal of intentionality included as a recommendation in the recent Independent Review of Children's Social Care³ and now urge the Government to take this forward through national legislation.

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

Priority need for homeless care leavers

Care leavers aged 18 to 20 automatically have priority need to be deemed homeless under legislation until they turn 21 when they have to prove their vulnerability. However, we see in our 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.

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 in the streets. We believe that 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.

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. Priority need has been abolished in Scotland since 2012 and the Welsh Government is now also considering reforming priority need. In England, the priority need test has recently been extended to survivors of domestic abuse to remove the burden on victims of having to prove they meet the vulnerability need. The same needs to happen for care leavers who by their very nature should be considered vulnerable.

Despite this wealth of evidence, it is disappointing that this recommendation was not included in the Independent Review of Children's Social Care and we encourage the Government to include the removal of this barrier when implementing the Review's recommendations.

Recommendations:

- **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.**
- **The Government should amend the Homelessness Code of Guidance to include a duty for local authorities to assess whether a young person aged 18 to 24 presenting as homeless should have been made a looked-after child when under 18 and thus should have care leavers entitlements, including priority need.**

³ The Independent Review of Children's Social Care (2021) <https://childrensocialcare.independent-review.uk/>

School Exclusions

The ICESCR recognises the right to education for the ‘full development of the human personality.’ While exclusion levels had previously continued to rise, they decreased in the last two years in England due to the Covid-19 pandemic and school closure during lockdown⁴, but continued to disproportionately affect certain groups: children eligible for free school meals, children with special education needs, boys, children of Gypsy/Roma background, Travellers and children of Black Caribbean background.⁵

- **Recommendation: School exclusion should only be used as last resort with more use of early intervention measures to prevent exclusions.**

Racism and disproportionality in School Exclusions

In the 2020/21 school year, the rate of permanent exclusion for Black Caribbean children was almost twice the average rate. For mixed White and Black Caribbean, it was more than twice the average rate.⁶ We see the impact of racial discrimination every day in our work with Black children excluded from school, which is often driven by stereotypes, unconscious bias and assumptions about Black pupils and their behaviour.⁷

We want a clear strategy to address racial disproportionality and better sanctions for schools who disproportionately exclude these children. The UK Government has recently published revised versions of both the Exclusion and Behaviour Statutory Guidance for England. Unfortunately, they have removed an important paragraph in the Exclusions Guidance that lists the different groups of children that are disproportionately affected by exclusions as mentioned above.

- **Recommendation: The DfE should address the disproportionate use of school exclusions against children from ethnic minority backgrounds and put in place a co-ordinated strategy to tackle these racial disparities. This should include analysing what national data says about trends in exclusion, increasing the diversity of school leadership teams, and to provide specialist funding for schools to provide support for children disproportionately at risk of exclusion.**

Child Criminal Exploitation and School Exclusions

Many of the children we work with have been excluded from school because of circumstances beyond their control. This includes children who are victims of child criminal exploitation (CCE), and whose behaviour is directly connected to that exploitation. In these cases, the child’s school often haven’t taken the time to understand the reasons behind the child’s behaviour or the ways in which

⁴ There were 5,057 permanent exclusions and 310,733 fixed-term exclusions in the academic year ending in 2020, compared with 7,849 and 438,265 respectively for the year ending 2019. While these statistics show that permanent exclusions and suspensions have decreased, 2019/20 was interrupted by the first national lockdown. Therefore, school closures have had a substantial effect on the number of permanent exclusions and suspensions so caution should be taken when comparing figures across years. Department for Education statistics (July 2021) *Permanent and fixed-period exclusions in England*: <https://www.gov.uk/government/statistics/permanent-exclusions-and-suspensions-in-england-2019-to-2020>

⁵ Department for Education (2020-2021) Permanent and fixed-period exclusions in England – Pupil Characteristics <https://explore-education-statistics.service.gov.uk/find-statistics/permanent-and-fixed-period-exclusions-in-england>

⁶ Department for Education (2020-2021) Permanent and fixed-period exclusions in England <https://explore-education-statistics.service.gov.uk/find-statistics/permanent-and-fixed-period-exclusions-in-england>

⁷ For a fuller analysis and list of recommendations on tackling the links between race and exclusions, see JfKL (2020) *Race, poverty and school exclusions in London* <https://justforkidslaw.org/news/new-research-reveals-children-poverty-and-black-children-london-are-more-likely-be-excluded-school>

those children are at risk. Excluding these pupils often makes them even more vulnerable to those who are exploiting them.⁸

A child who commits an offence because they are a victim of exploitation is rightly able to have those circumstances recognised as part of their defence in the criminal courts. There is no equivalent protection for children who face being excluded from school in the same circumstances.

In our response to the UK Government's consultation of the Exclusion and Behaviour Statutory Guidance in England, we called for more recognition of the link between CCE, school exclusions and behaviour. Our recommendations were for headteachers to consider whether a child might be a victim of CCE when deciding whether to exclude, for governors to also have this consideration when reviewing the headteachers decision and for the guidance to include information on the indicators and risk factors of CCE. Unfortunately, there is still no mention of CCE in the exclusion guidance, but there is one reference to CCE in the behaviour guidance as a contributory factor to misbehaviour.

- **Recommendation: There should be better recognition of the link between school exclusions and CCE and better protections for children who are excluded from school and are victims of CCE.**

A fairer and more independent process for challenging unfair exclusions

Too often the pupils and parents we work with are not given an opportunity to fully put their case across during exclusions hearings. We frequently see exclusion decisions where governing bodies have not fully considered a child's circumstances or provided a proper account of their reasons for excluding.

The appeal bodies for reviewing school exclusions (Independent Reviewing Panel – IRP) lack power to reinstate a child at a school after this power was removed in 2012.⁹ Even when the IRP has recommended that a school reinstate a pupil, governing bodies are likely to uphold their original decision. In 2019/20 schools only offered to reinstate pupils in 20%¹⁰ of the cases where an IRP recommended reinstatement and in 23% of cases in 2020/21.¹¹ The review system to challenge unfair and unlawful school exclusions remains ineffective. Since there is no legal aid available, families must argue cases involving complex law principles themselves.¹²

- **Recommendation: The IRP should be given the powers to direct schools reinstate children.**

⁸ For more detail on this recommendation and links to existing resources on spotting the signs of child criminal exploitation, see JfKL (2020) *Excluded, exploited, forgotten: Childhood criminal exploitation and school exclusions* https://www.justforkidslaw.org/sites/default/files/fields/download/JfKL%20school%20exclusion%20and%20CCE_2.pdf

⁹ IRPs can only recommend a school to consider reinstatement, not mandate reinstatement. *Suspension and Permanent Exclusion from maintained schools, academies and pupil referral units in England, including pupil movement*. September 2022. Page 61, para 223: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1101498/Suspension_and_Permanent_Exclusion_from_maintained_schools_academies_and_pupil_referral_units_in_England_including_pupil_movement.pdf

¹⁰ Department for Education (2019-2020) Permanent and fixed-period exclusions in England <https://www.gov.uk/government/statistics/permanent-exclusions-and-suspensions-in-england-2019-to-2020>

¹¹ Department for Education (2020-2021) Permanent and fixed-period exclusions in England <https://explore-education-statistics.service.gov.uk/find-statistics/permanent-and-fixed-period-exclusions-in-england>

¹² LAG (2014) *The education problems still covered by legal aid* <https://www.lag.org.uk/article/202534/the-education-problems-still-covered-by-legal-aid>