



# Resettlement

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The legal rights of children and young people in the criminal justice system in need of accommodation and support

Front cover design : with special thanks to U R Boss young advisors

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# Forewords

Resettlement is important so that you move on. So that you can forget about the past and think about the future. You're not giving people a chance if you're sending people back to the same thing and the same patterns they were in before.

It needs to be quicker. There should be less discussion about what you're going to do and more doing it. If professionals had done their job with me I would have somewhere to live now, I'd have some form of ID, a bank account and a steady life so I could start to look for a job.

There are so many young people coming out of prison who do want to change but they're not given the chance. Young people are not stupid; they do know what they want. But so many are recalled and so many professionals have complaints made about them, it's more hassle for everyone. Professionals and young people should work together.

Young people do change when they come out of prison. Help us go forward.

## **Young advisor, U R Boss**

Far too many children and young people are sent to prison unnecessarily and far too many are failed when they are released. The system does not work for those children and young people incarcerated, the communities they return to and the victims of crime. It is unacceptable that so many of these children and young people end up back in prison. The Howard League for Penal Reform works to change this revolving door of offending and to ensure that the most vulnerable in our society are given every chance to succeed.

The Howard League's legal work began with a judicial review in 1996 challenging the rules of the proposed secure training centres that ignored domestic and international child protection and children's rights laws. In 2002, the charity's successful judicial review secured a landmark judgement which changed the law to ensure that children in prison are protected by the law in the same way as children in the community (*R (Howard League for Penal Reform) v Secretary of State for the Home Department* [2002] EWHC 2497 (Admin)). Our legal team is the only frontline national legal team dedicated to the legal rights and entitlements of children and young people in prison. We have achieved a succession of landmark judgments which have strengthened the duties owed to every child and their life chances. We have also produced a number of publications that set out the legal position and needs of children and young people in the criminal justice system. These include *Twisted* (2011), *Access to Justice Denied* (2010), *Young, Adult, No Support* (2010), and *Parole 4 Kids: A Review of the Parole Process for Children in England and Wales* (2008).

In 2009, the Howard League established U R Boss, a five year project supported by the Big Lottery Fund. This has allowed us to expand our legal work, take forward issues raised by children and young people to inform policy, lobby the government and hold seminars and talks. It has also allowed us to produce this guide, the first in a series of public legal education materials for people working with children and young people in the criminal justice system.

The Howard League's legal team operates a legal advice line for children and young people in prison which is a free and confidential telephone number automatically available on the prison pin system: 0808 801 0308. Practitioners, family, carers and friends can also contact us for legal advice on 0207 249 7373.

The work we do covers many areas of law and different problems faced by children and young people. Resettlement is consistently the top issue that people contact us about for legal help. Resettlement is more than just providing housing, it is ensuring that children and young people have a home, that their needs are met and that they have the best possible chance for a positive future.

This guide is not intended to replace legal representation. It should enable practitioners to better understand and use the law to support the children they work with. In conjunction with this guide, we will be producing a young person's guide to resettlement, to help children and young people better understand their own rights and entitlements and understand what they can do, and how they can get support in relation to resettlement.

The law is not just a means of negative enforcement to put children and young people in prison; it can be a tool for positive change when they are released.

***Tabitha Kassem, Legal Director***

***The Howard League for Penal Reform***

# Introduction

No child in England and Wales should ever want for a safe and suitable place to live, or appropriate support. This is because we have a robust legal framework that requires local authorities to provide children who need it with accommodation and support. Failure to do so can be legally challenged.

The Howard League for Penal Reform's legal department has worked with hundreds of children and young people who have nowhere suitable to go when they leave prison. Many are returning to precisely the same situation that led to their detention in the first place.

Data from the Howard League for Penal Reform's legal advice line shows that from November 2008 to the end of March 2012, over a quarter of the 1,960 calls to the legal helpline related to problems with resettlement (26 per cent or 509 calls). The need for assistance with accommodation on release from prison is confirmed by Her Majesty's Inspectorate of Prisons' (HMIP) report on looked after children which found that a significant number of children and young people had not obtained early release because they had nowhere safe to be released to (HMIP, 2011).

## How to use this guide

The purpose of this guide is to help practitioners working with children and young people in the criminal justice system understand the legal framework to make sure that young people's rights to safe, suitable accommodation and support become a reality. This guide should enable practitioners to identify resettlement problems at an early stage and make sure that children get the help they need so their rights can be protected and enforced.

This guide sets out the key legal principles that apply to children and should underpin decisions about their rights to accommodation and support. It also provides an overview of what a resettlement package should include and why it is important in preventing reoffending. For practical reasons, this guide largely concerns the rights of children in England and Wales under the age of 18, although from time to time it touches upon the rights of young adults aged 18 to 21 and the special considerations that apply to foreign national children and young people. Where reference is made to a child in this guide, this refers to anyone who is under 18 years of age as set out at section 105 of the Children Act 1989. A young person in this guide is anyone aged 18 to 21.

This guide sets out seven steps that lead practitioners through the three legal pathways to accommodation and support for children and young people. It aims to help professionals work out when a child or young person will need help, the public protection considerations that may apply and, importantly, the possible legal routes available to make sure that they get what they need.

For ease of reference each section of this guide starts with a summary of some of the key points set out in that section or the key questions or issues to consider. At the end of each section there is a list of the key legislation or guidance that a practitioner may want to refer to for more detail.

Like other areas of professional practice, resettlement law has developed its own set of terms over a period of time. These terms are set out in the glossary. Where available, links to relevant legislation and guidance are also provided in Appendix 3 of this guide.

## A note on the law

The legal framework for resettlement in this guide is drawn from legislation, guidance and case law. The law referred to in this guide is correct as of September 2012. The law in this area is constantly evolving, alongside guidance and policy.

At the time of writing this guide, two important developments are planned.

First, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPOA) contains provisions that, if implemented, will mean that all children remanded to custody will become 'looked after' under section 20 of the Children Act 1989 during their period of remand regardless of where they are placed. At present this position only applies to children remanded to local authority care, or secure accommodation in the form of secure children's homes and secure training centres. Therefore, if implemented, the considerations that apply to children on remand in secure children's homes and secure training centres will also apply to children in Young Offenders' Institutions. It is anticipated that this change, along with variations to the legal threshold for remanding a child to detention, will result in a significant reduction in the number of children remanded to custody. This development will not change the steps that practitioners need to take but will mean that local authorities may owe stronger duties to children who have been remanded to custody.

Second, The National Standards for Youth Justice Services (National Standards) are in the process of being revised. The Secretary of State for Justice sets National Standards for Youth Justice Services on advice from the Youth Justice Board (YJB) for England and Wales. Although the precise legal status of the National Standards is unclear, in the latest edition, the statement of purpose in the National Standards for Youth Justice Services 2012 states that they apply to those organisations providing statutory youth justice services. They are also described as 'as a distillation of the range of legislation, compliance regimes and sources of statutory and effective practice guidance which applies across the youth justice sector' (National Standards, 2012).

The YJB has a responsibility to monitor adherence to National Standards on behalf of the Secretary of State for Justice. The National Standards define the minimum required level of service provision.

The latest version of the National Standards, which is a trial set of standards designed to focus on outcomes rather than processes, was published in April 2012 (National Standards, 2012). These National Standards were designed to replace the previous set of Standards from 2009 (National Standards, 2009). Both sets of National Standards include distinct requirements for children in custody and in the community. The custodial requirements are virtually unchanged in the 2012 version as the focus of the trial has been to evaluate the impact of providing Youth Offending Teams (YOTs) a greater level of discretion where working with children in the community. As the new standards are 'trial' standards, they do not have to be implemented by YOTs until October 2012. Therefore, until October 2012, YOTs can elect to follow either the 2009 or the 2012 standards. In April 2013, the trial standards will be reviewed. For ease of reference we have referred to both the 2009 and 2012 standards throughout this guide.

# Guiding legal principles

## Summary

- The overall aim of the youth justice system is to prevent offending
- The law recognises that children should be treated differently from adults
- Any sanction should be the least restrictive possible. Detention should be a last resort and, where children are detained, it should be for the shortest possible period of time
- In all decisions about children, their welfare should be a primary consideration
- Children are entitled to independent legal advice and representation and to be consulted on a fully informed basis about decisions that affect them
- These guiding principles should underpin all decisions made about children and young people in the criminal justice system.

The law relating to children and young people has developed exponentially in recent years. The following key principles should underpin all decisions made about children and young people in the criminal justice system.

Many of the principles set out below are also outlined in the Sentencing Guideline Council's (SGC) definitive guideline *Overarching Principles – Sentencing Youths* (November 2009). Although the guideline provides specific guidance that courts must have regard to when sentencing children and young people, it provides a very useful summary of the key principles and indicates the extent to which the courts now recognise their importance.

## A different approach for children

Children should be treated differently from adults. This is reflected by the development of specific laws, international instruments, policy and guidance applicable to children. For instance, the criminal law provides a whole range of sentences that are only available to children. The introduction of the Children Act 1989 provided a comprehensive framework promoting the best interests of the child, a principle enshrined in the UN Convention on the Rights of the Child (UNCRC).

Case law has acknowledged that young people in conflict with the law 'change and develop in a shorter time than adults' (*R v. Lang & 12 others* [2006] 2 All ER 410). Case law has also highlighted that:

*[t]he courts have consistently approached consideration of measures which are to be applied to children on the basis that the immaturity of a child offender must be taken into consideration as being of prime importance. This recognises the fact that a child may well change as he or she matures so that any problems or dangers which may have been apparent at the time of the commission of the offence may ultimately no longer be present...*

(*R (F and Thompson) v Secretary of State for the Home Department* [2008] EWHC 3170 at paragraph 19).

In light of the specific considerations that apply to children, a number of key principles relevant to children in the criminal justice system have been developed.

### **The least restrictive sanction and detention as a last resort**

Detention should always be the very last option, especially where children and young people are concerned. This is because restricting liberty is recognised by the law to be a very serious step.

In *Saadi v United Kingdom* (Application no. 13229/03, paragraph 70), the Grand Chamber in Strasbourg said that:

*...the detention of an individual is such a serious measure that it is only justified as a last resort where other, less severe measures have been considered and found to be insufficient to safeguard the individual or public interest which might require the person concerned to be detained.*

It is a general principle, expressed in the Criminal Justice Act 2003 (section 152(2)), that judicial discretion to impose a custodial sentence must only be exercised as a last resort:

*The court must not pass a custodial sentence unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was so serious that neither a fine alone nor a community sentence can be justified for the offence.*

Even if a sentence of detention is imposed, the Criminal Justice Act 2003 (section 152(2)) states that it should be for as short a time as possible, taking the offence into account:

*...the custodial sentence must be for the shortest term that is in the opinion of the court is commensurate with the seriousness of the offence...*

The principle that custody should be a last resort is reinforced by Article 37 of the UNCRC:

*States Parties shall ensure that:*

*(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;*

*(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.*

The European Rules for Juvenile Offenders subject to sanctions and measures (2008) reiterate that detention is a measure of last resort and imposed and implemented for the shortest period possible (Rule 10). Rule 9 makes it clear that all sanctions should be the minimum necessary:

*Sanctions or measures shall be implemented without undue delay and only to the extent and for the period strictly necessary (emphasis added).*

If the legal requirement that detention should be a last resort is to be followed, it is essential that all practicalities necessary for alternative measures are in place.

As this guide makes clear, the law means that no child in England and Wales should be without suitable accommodation and support. However, some children are detained when the courts are concerned that the community alternative is not suitable.

Where a child is at risk of detention, it will be essential to take all possible steps to ensure that suitable accommodation and support is available immediately to minimise the risk of detention.

The Children Act 1989 specifically requires local authorities to take steps to reduce the need to bring criminal proceedings against children, to encourage children within their area not to commit criminal offences, and to avoid the need for children within their area to be placed in secure accommodation (section 7 of schedule 2 of the Children Act 1989).

### **Welfare should be a primary consideration in all decisions affecting children**

The overarching protection is the principle reflected in section 44(1) of the Children and Young Persons Act 1933 (the 'Welfare Principle'):

*(1) Every court in dealing with a child or young person who is brought before it, either as an offender or otherwise, shall have regard to the welfare of the child or young person and shall in a proper case take steps for removing him from undesirable surroundings, and for securing that proper provision is made for his education and training.*

Case law has clarified the weight to be attached to the welfare principle in relation to children in the criminal justice system:

*The welfare of the child is an important and indeed fundamental consideration in determining how a child who has committed offences should be dealt with*

*(R (M) v The Chief Magistrate [2010] EWHC 433 (Admin) at paragraph 7).*

The Welfare Principle is also reflected in Article 3(1) of the UNCRC:

*In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*

The Supreme Court has held that the best interests' principle has been translated into national law by the Children Act 2004 (section 11):

*This is a binding obligation in international law, and the spirit, if not the precise language, has also been translated into our national law. Section 11 of the Children Act 2004 places a duty upon a wide range of public bodies to carry out their functions having regard to the need to safeguard and promote the welfare of children...*

*(ZH (Tanzania) v Secretary of State for the Home Department [2011] 2 WLR 148 (paragraph 23)).*

The Supreme Court endorsed this approach in the case of *HH v Italy* [2012] 3 WLR 90.

## Children are entitled to access to justice

Children are entitled to access for justice. This includes access to legal advice and representation, a right to be heard and the right to be consulted on a fully informed basis about decisions that affect them.

Article 12 of the UNCRC provides that:

*1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.*

*2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.*

The Council of Europe produced *Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice* in November 2010 which aims to 'ensure that, in any such proceedings, all rights of children, among which the right to information, to representation, to participation and to protection, are fully respected with due consideration to the child's level of maturity and understanding and to the circumstances of the case' (paragraph 1.3). Paragraph IV D 2 sets out a number of important principles including:

- Children should have the right to their own legal counsel and representation (paragraph 37)
- Children should have access to free legal aid (paragraph 38)
- Children should be considered as fully fledged clients with their own rights and lawyers representing
- Children should bring forward the opinion of the child (paragraph 40)
- The guidelines provide detailed guidance on how children involved in the criminal justice system should be consulted and assisted.

It is essential that children are facilitated to access independent legal advice and representation. For many children, access to a lawyer is effectively 'filtered' through professionals. This may occur where a professional who is aiming to assist the young person by taking a number of practical steps, unwittingly restricts the young person's access by failing to help them access an independent lawyer.

In addition to the right to access to justice, there are many instances where a child has a right to be consulted. For instance, where a child is looked after under section 20 of the Children Act 1989, sub-section 20(6) requires the local authority, so far as is reasonably practicable and consistent with the child's welfare, to take the child's wishes and feelings into account in the provision of accommodation.

## The overall aim of the youth justice system is to prevent offending

Section 37 of the Crime and Disorder Act 1998 provides that the purpose of the criminal justice system for young people is to prevent reoffending. The Supreme Court has commented that a key aim 'of any sentence imposed should be to promote the process of maturation, the development of a sense of responsibility, and the growth of a healthy adult personality and identity' (*R v Secretary of State, Ex parte Maria Smith* [2005] UKHL 51, Baroness Hale at paragraph 25).

## Children's rights are human rights

The UNCRC provides a comprehensive checklist of children's rights. They complement many of the rights found in the European Convention on Human Rights (ECHR).

Key Articles of the ECHR applicable to children include:

- Freedom from torture (Article 3)
- The right to liberty (Article 5)
- The right to a private and family life, as well as personal and social development (Article 8).

The courts have held that when interpreting the rights contained in the ECHR, it is legitimate to rely on UNCRC to interpret and inform the extent to which the human right has been breached. For instance, in the Howard League's Children Act case (*R (Howard League for Penal Reform) v Secretary of State for the Home Department* [2002] EWHC 2497 (Admin)), the court noted that the UNCRC, as well as other equivalent, non-binding international law, can be relevant to 'proclaim, reaffirm or elucidate' the scope of other fundamental rights.

This means that the rights set out in the ECHR can be read in light of the rights in the UNCRC. For instance, if a child's application for early release is impossible because of a lack of resettlement plans, the interference with that child's right to liberty under Article 5 of the ECHR is especially serious as there is a duty under Article 37 of the UNCRC to make sure that children are detained for the shortest appropriate period of time.

### Key legislation and guidance

- European Convention on Human Rights (ECHR)
- United Nations Convention on the Rights of the Child (UNCRC) (1990)
- Council of Europe (2010) *Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice*
- European Rules for Juvenile Offenders
- Sentencing Guideline Council (2009) *Overarching Principles - Sentencing Youths*
- Crime and Disorder Act 1998
- Children Act 1989

# What makes up the resettlement package: More than a roof overhead

## Summary

- There is a strong link between lack of safe, suitable accommodation and support and reoffending
- Children in detention are often vulnerable and have high levels of need for accommodation and support in the community
- A resettlement package should cater for all of a child's assessed needs ensuring practical and emotional support in respect of accommodation, education, training, employment, health including mental health, help with substance misuse issues and practical and emotional support, including support with family contact and finances
- Securing suitable accommodation is a vital first step in this process.

The link between reoffending and lack of safe and suitable accommodation and support is well established. This has been recognised by the YJB who have outlined seven resettlement pathways for practitioners to consider in Youth Resettlement: A framework for action<sup>1</sup>. According to the Social Exclusion Unit (2002), stable accommodation can result in a reduction of more than a fifth in reoffending rates. Research by the YJB (2007) found that 40 per cent of children in custody have previously been homeless or have sought formal housing support.

Given that the whole aim of the youth justice system is to prevent reoffending (section 37 of the Crime and Disorder Act 1998), suitable accommodation and support at every stage (pre-sentence, in custody and post-custody) is critical.

It is not surprising that resettlement is one of the main tests against which Her Majesty's Inspectorate of Prisons judges the health of a prison. It is recognised that living in unstable accommodation is a major risk factor in offending behaviour (Cripps and Summerfield, 2012). Ensuring that young people have suitable accommodation on release from custody is a vital first step towards their effective resettlement. But children and young people will have a whole range of needs that must be met.

Young people in custody are often vulnerable and will require high levels of support. This was noted by the court in the Children Act case:

*[Children in custody] are, on any view, vulnerable and needy children. Disproportionately they come from chaotic backgrounds. Many have suffered abuse or neglect...*

*R (on the Application of the Howard League) v Secretary of State for the Home Department and the Department of Health [2003] 1 FLR 484, paragraph 10).*

A joint report by Her Majesty's Inspectorate of Prisons and the YJB in 2011 illustrates the vulnerability of the young people in Youth Offending Institutes (YOIs) that they surveyed (Summerfield, 2011). It found that one quarter of boys and nearly half of girls interviewed had been in the care of social services before entering custody and almost nine out of ten children had been excluded from school.

<sup>1</sup> <http://www.yjb.gov.uk/publications/Resources/Downloads/Youth%20Resettlement%20Framework%20for%20Action.pdf>

It is therefore likely that most young people leaving prison will need a lot more than just a roof overhead if they are to stay out of prison and build a positive life for themselves. That means planning for effective resettlement for all of the young person's needs.

Taken together, the YJB's resettlement pathways and the National Standards provide that resettlement planning should cover arrangements for:<sup>2</sup>

- education
- training
- employment
- family contact
- appropriate financial advice
- offending behaviour work
- accommodation
- health and mental health provision
- other relevant issues (including whether the child should be assessed by children's services as a 'child in need' under section 17 of the Children Act 1989)
- engaging with parents/carers
- managing any risk issues in relation to victims
- managing any risk of serious harm to others and other Multi Agency Public Protection Arrangements (MAPPA) issues
- details of reporting arrangements on day of release

Even if young people have accommodation to go to they may still need help and support with all the other aspects of resettling into the community. Accommodation tends to be the most pressing concern raised by young people because it is essential for release. However, the other aspects of resettlement planning can be critical to successful reintegration.

The higher level of support required for young people being looked after by the state, compared to those in receipt of housing services only, was recognised by Baroness Hale in her judgement in the case of *R(M) v Hammersmith and Fulham*:

*There is all the difference in the world between the services which a child can expect from her local children's services authority, to make up for the lack of proper parental support and guidance within the family, and the sort of help which a homeless young person, even if in priority need, can expect from her local housing authority.*

*(R (M) v Hammersmith and Fulham [2008] 1 WLR 535 at paragraph 24).*

The message in the Hammersmith and Fulham case was that many of these resettlement needs over and above a roof overhead will require input from social services. While in practice many of these non-accommodation resettlement needs are met by the Youth Offending Team (YOT), it is important to remember that YOT involvement will usually come to an end when a sentence expires or when a young person transfers to probation.

If a young person still needs help and support, it may be essential for them to be in receipt of help from social services so that this help does not suddenly fall away. It is also important that social services get involved from an early stage as failure to do so can result in the young person failing to accrue leaving care rights (see section 5, page 51).

The importance of joint working to ensure that all of a child's assessed needs are met is recognised by the YJB in its adoption of seven 'resettlement pathways' set

**2 see Standard 9.30 in the National Standards 2009 and 9.19 in the National Standards 2012**

out in *Youth Resettlement: A Framework for Action YJB* (2006). Taken together the seven pathways and the National Standards<sup>3</sup> provide that resettlement planning should cover the needs set out in the check list below. We have devised this simple checklist, drawing on law, policy, guidance and examples of best practice to assist practitioners in asking the right questions of the right people when planning for a young person's effective resettlement in the community. The check list is designed as a starting point – it is not exhaustive.

### Effective resettlement checklist

Needs	Some questions to ask	The people to go to/ notes
Transitions	<ul style="list-style-type: none"> <li>• Is YOT involvement due to come to an end soon?</li> <li>• Is the young person due to transfer between custody and community?</li> <li>• Is the young person due to experience a change of placement (leaving home, local authority care etc)?</li> <li>• Is the young person about to experience a change in educational provision?</li> </ul>	<p>If the young person is likely to turn 18 while involved with the criminal justice system YOT will need to ensure a smooth transition to Probation. Equally, if the child is about to cease to be involved with the criminal justice system but has needs that will continue and that are currently met by the YOT, the YOT will need to make a referral to social services, either children's services or adult services depending on the age of the young person and whether or not they should be a care leaver. Where a young person is entering or leaving custody YOT will need to liaise with secure staff – this may include considering temporary releases for resettlement purposes. Where the young person is leaving custody, YOT/probation and secure staff will need to consider possible licence conditions, including reporting arrangements on release, in consultation with the young person and, if appropriate their family. Arrangements will also need to be made for transporting the child from custody. If the young person is in care or vulnerable, this should be undertaken by social services – children's services/adult services. If the young person has health needs that will need to be met across a transition, health services will need to ensure continuity of care. The child should be fully consulted about all of these issues.</p>
Accommodation	<ul style="list-style-type: none"> <li>• Does the child have somewhere to live?</li> <li>• Is the placement suitable to meet the child's needs/any public protection concerns?</li> <li>• Have the child's wishes and feelings been taken into account?</li> </ul>	<p>YOT (and if relevant, secure staff) will need to consider when the need for accommodation is likely to arise, whether it is available and if it is suitable. If no suitable accommodation is available, social services/children's services will be required to undertake an assessment and identify suitable accommodation for all children under 16 and for many children aged 16 and 17, as well as some care leavers aged under 21; local authority housing departments may be able to assist if 16 and 17 year olds do not wish to be accommodated by social services. YOTs may need to liaise with probation and MAPPAs to deal with any public protection concerns including the suitability of the accommodation for early release or release on licence at the half way point and issues relating to victims. See the seven steps to resettlement for more detail.</p>

<sup>3</sup> see Standard 9.30 in the National Standards 2009 and 9.19 in the National Standards 2012

<p>Education, training and employment</p>	<ul style="list-style-type: none"> <li>• Is the child engaged in education/training or employment?</li> <li>• Does the child wish to be engaged in education/training or employment?</li> <li>• Will the child need help in accessing education and employment due to previous convictions or health difficulties?</li> </ul>	<p>YOTs will need to liaise with children's services and where relevant secure staff, including educational providers in secure settings, as well as school and college staff to ensure continuity and quality of education between the community and the secure estate. Where children are in custody, YOT and secure staff will need to work together to ensure children have access to appropriate offending behaviour work as soon as possible, especially where release is dependent on the completion of this. Where children have special educational needs, it will be necessary for children's services to ensure that they have relevant up to date information and they can assist with special requirements; YOTs may need to work with children's services to ensure that any disclosure to prospective educational placements is done in an appropriate, sensitive and timely manner. While connexions advisors may be able to assist with education options, it is important to remember that YOT, probation and/or MAPPA may need to play an active role in dealing with disclosure and safeguarding issues with the perspective educational establishment. Health services may need to be involved in undertaking specialist assessments that will inform an understanding of the appropriate placement. YOTs and/or probation will need to liaise with secure staff to progress any applications for attending education in the community while a child is in custody.</p>
<p>Health</p>	<ul style="list-style-type: none"> <li>• Is the child linked in with general health provision (i.e. registered with a GP, dentist etc)?</li> <li>• Does the child require any specialist health and/or mental health provision?</li> <li>• Does the child require any information on health issues, including healthy lifestyle, sexual health etc?</li> </ul>	<p>Young people in the criminal justice system may lead chaotic lives without adequate links to health services and information. YOTs may identify these needs in the Asset and should liaise with health services, including CAMHS where there may be a mental health need, and social services. Where a child or young person is entering or leaving custody, health services in the community should liaise with health services in custody to ensure continuity of care. Where a child or young person is a 'child in need', looked after or a care leaver, social services children's services should ensure that health needs are met and assessed as part of their work. Similarly, if a young person is or about to become a vulnerable young adult, adult social services should assess their needs prior to leaving custody. Some YOTs and probation services have health, including mental health, practitioners attached to their services. If it appears to any practitioner that a young person is suffering from mental health problems while in detention, a referral to the head of healthcare in the secure establishment should be made so that mental health can be assessed.</p>

Substance misuse	<ul style="list-style-type: none"> <li>• Does the child have a history of substance misuse issues?</li> <li>• What help can be provided to the child to abstain from or manage substance misuse?</li> </ul>	<p>Substance misuse, or a history of substance misuse, can sometimes be dismissed as evidence of further negative behaviour rather than a need that requires on-going support. YOTs will need to liaise with probation and secure establishment staff where relevant to a young person moving to probation or custody to ascertain what interventions and help are available and to ensure continuity of care from a substance misuse perspective. Where a child is to be released from custody, it will be essential to ensure that there is continuity of care and on-going support which may be available through YOT, probation, social services and/or local health services. It may also be essential to ensure that accommodation provision does not expose a child to substance misuse. If a child over 16 is being placed in local authority accommodation under the Housing Act, it may be necessary to liaise with the local authority housing department to ensure that accommodation is appropriate from a substance misuse perspective.</p>
Families	<ul style="list-style-type: none"> <li>• Does the child have family contact and how will the resettlement plan affect this?</li> <li>• Is the family able to provide suitable support and assistance?</li> <li>• Does that family require help to support the young person?</li> <li>• If appropriate, has the family been consulted on the resettlement plan?</li> </ul>	<p>YOT may be able to liaise with the child, the child's family and/or children's services to ascertain the nature and level of contact with family. Where possible family contact should be promoted and fostered. This may include contact with the child's own child or family members who have been estranged or are subject to supervised contact. A child may have a known history of difficulties within the family including previous abuse, neglect or bereavement, all of which may trigger assistance from children's social services. If the family need help to support the young person, this should be assessed by children's social services within a child in need assessment under s17 of the Children Act 1989. Help can be provided to families by children's services to meet their assessed needs. Where children or their parents and carers are at risk of custody, consideration should be given to the impact of custody on the welfare of the child and any concerns should be highlighted to the court and the child's legal representatives. Where a child is detained, children's social services and/or YOT should liaise with the family, child and secure staff to ensure suitable and regular family contact. Where appropriate YOTs and children's services should consult the child's family on the resettlement plan to ascertain whether it will promote positive contact and, if not, make provision to deal with this.</p>
Finances, benefits and debt	<ul style="list-style-type: none"> <li>• What is the child's financial situation?</li> <li>• What financial support does the child have?</li> <li>• Does the child have identity documents, a bank account and a national insurance number?</li> <li>• Does the child have the skills to budget?</li> <li>• Will the child be entitled to benefits and, if so, will the child need help in obtaining them?</li> </ul>	<p>Lack of income can cause children stress and social isolation both in the community and in detention. YOTs should be able to ascertain a child's financial situation and assess whether or not the child requires assistance with this. If the child is a child in need, a looked after child or a care leaver, children's social services should consider the child's financial situation as part of their on-going assessment duties and make provision for assistance with this in the community. If a child does not have a national insurance number YOTs or children's services can obtain this by following government guidance.<sup>4</sup></p>

<sup>4</sup> For government guidance on how to get a NI number, see:

[http://www.direct.gov.uk/en/MoneyTaxAndBenefits/Taxes/BeginnersGuideToTax/NationalInsurance/IntroductiontoNationalInsurance/DG\\_190057](http://www.direct.gov.uk/en/MoneyTaxAndBenefits/Taxes/BeginnersGuideToTax/NationalInsurance/IntroductiontoNationalInsurance/DG_190057)

## The importance of accommodation

It is well recognised that it will only be possible to plan for children and young peoples' wider needs if a stable base has been secured for them.<sup>5</sup>

Ensuring that young people have suitable accommodation and support for their needs on release from custody is a vital first step for their effective resettlement. It is usually the most complicated and expensive aspect of the resettlement package. The rest of this guide therefore focuses on securing suitable accommodation in recognition of this. But practitioners should bear in mind the importance of other aspects of the resettlement package in ensuring successful outcomes for children and young people.

### Key legislation and guidance

- Sections 17 and 20 of the Children Act 1989
- National Standards 2012
- Children Act 1989, Volume 3: Planning Transition to Adulthood for Care Leavers
- Youth Justice Board (2006) *Youth Resettlement: A Framework for Action*
- Department for Children, Schools and Families (2010) *Guidance on securing sufficient accommodation for looked after children*

<sup>5</sup> See for instance, *Planning Transition to Adulthood for Care Leavers: Statutory guidance at Vol 3 Children Act 1989 Guidance and Regulations, Paragraph 6.43*, Available at: <https://www.education.gov.uk/publications/eOrderingDownload/DfE-00554-2010.pdf>

# Seven steps to effective resettlement planning: An overview

## Summary

There are seven steps to effective resettlement planning. Following these steps will ensure the three possible legal alternatives (steps 4, 5 and 6) for provision of accommodation and support are fully considered. The final step, 'making it happen' can be referred to throughout the process.

This section sets out the seven steps and provides an overview of what they include.

The appropriate pathway for a child or young person will depend on many different factors including what the young person wants, public protection requirements and what is available to the young person in law.

Assisting a child or young person with resettlement is a complex task. There are seven key steps that practitioners can follow to assist a child or young person in need of accommodation and support. The steps are designed to walk practitioners and young people through the three possible legal pathways for accommodation in such a way that complies with the legal framework for this area of law.

The seven steps are summarised below. Each step is set out in detail in the subsequent sections of this guide.

## **1: Identify the need for a resettlement package and work out when it is required for**

Children and young people in the criminal justice system are likely to be in need of resettlement packages in a range of situations. The first step in helping children and young people is to be able to identify the kinds of scenarios where a resettlement package is likely to be needed, such as when a young person is due to be sentenced or is detained pending an appeal.

Once the need has been identified it is essential to work out when the package is required. Sometimes this will need to be immediate and on a contingency basis. Sometimes there will be a fixed date for when the package will need to be in place to avoid placing a child or young person at risk on release or to enable them to achieve early release. GO TO PAGE 21 TO FIND OUT MORE

## **2: Are there any public protection considerations – bail conditions, licence conditions and MAPPA**

The next step is to consider what, if any, constraints there will be on resettlement planning. For example, will the child or young person be released on licence, on early release or automatically or without a licence at all? If the child or young person is to be released on licence, their YOT or probation officer will probably have to approve it. They may be subject to MAPPA which means that any restrictions should be raised as early as possible in case they affect the release plan, or the child or young person wishes to make representations about them. Equally, a young person serving a community sentence or on bail may be subject to restrictions that affect their resettlement plan. GO TO PAGE 34 TO FIND OUT MORE

### **3: What the child or young person wants and explaining the three legal alternatives for accommodation and support**

As a general rule, a good starting point is to find out what the child or young person wants. Even if it turns out not to be possible to provide exactly what they want, it is essential that the child or young person is central to the planning process: they will need to 'buy in' to the release plan for it to work.

It is also a good idea to explain the three legal pathways for accommodation to a child or young person where possible so that they understand the process that is about to commence and can make informed decisions.

GO TO PAGE 41 TO FIND OUT MORE

### **4: Can the child or young person go to friends or family?**

The natural starting point for most children and young people is to consider returning 'home'. If this is not an option, there may be friends or family that want to assist. The law is clear that, where possible, children should remain in the family home. However, even if the child or young person can return home, it is still a good idea to check that this arrangement is suitable both from the child or young person's point of view, the carer's point of view and from the YOT or probation's point of view.

Children and young people who live with friends and family may still get additional support from social services. However, if they or their carer require support to make the arrangement work or if the placement is arranged by social services, then it may be that the child or young person should legally be placed with friends and family under the Children Act 1989. It is therefore important to always consider step five – even if the child or young person is going to live with friends or family.

GO TO PAGE 47 TO FIND OUT MORE

### **5: Accommodation under the Children Act – section 20 and beyond**

If the child or young person cannot return home without support or at all, it will be necessary to work out what support they are entitled to from social services. All children under the age of 16 who require accommodation will be entitled to it from social services.

However, working out what support those aged 16 or over are entitled to from social services can be complex. It will be necessary to work out firstly if the child or young person has any care status already and if not, whether he or she meets the child in need criteria. If a 16 or 17 year old is a care leaver or a child in need and requires accommodation and support, then they will be entitled to section 20 accommodation. A child aged 16 or over must consent to being 'looked after'.

GO TO PAGE 49 TO FIND OUT MORE

### **6: Accommodation from the Housing Authority (over 16s only)**

If the child or young person over 16 does not consent to or is not entitled to accommodation from social care, they may be entitled to accommodation from the housing authority under the Housing Act 1996.

GO TO PAGE 61 TO FIND OUT MORE

## 7: Making it happen: Who has got to do what and when and what to do when things go wrong

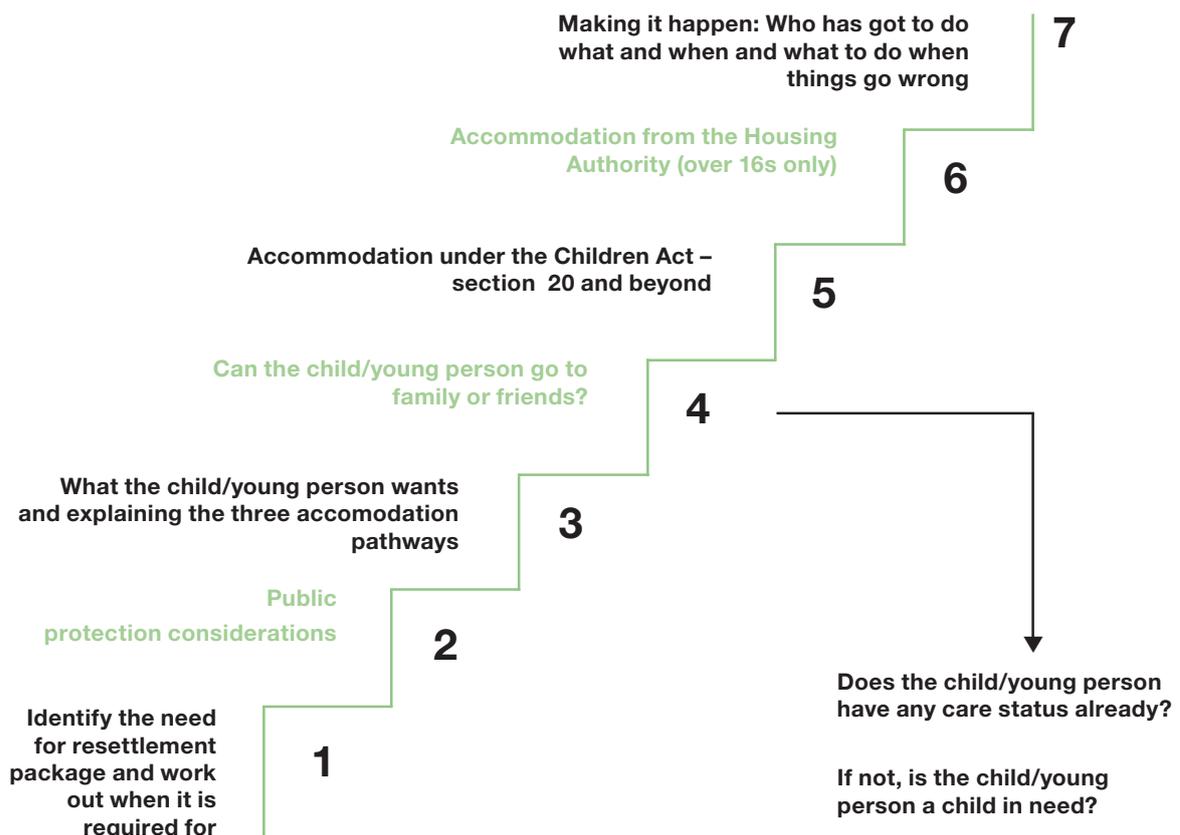
While the law is clear about what ought to happen, many young people find the reality very different. There are lots of ways that practitioners can help to make sure resettlement planning is effective, including chasing other professionals to make sure they have complied with their tasks on time.

When things do not go according to plan or go wrong, practitioners can help children and young people to raise their concerns either through representations or by helping them to make a complaint. Practitioners can also help children to access justice by helping them to make contact with a lawyer who can help.

GO TO PAGE 68 TO FIND OUT MORE

An illustration of the seven steps is provided below.

### The legal pathway – the seven steps



### **Case study: Peter**

Peter is a shy young person. He lived in West London until he was arrested for a series of street robberies and remanded to a Secure Children's Home (SCH) aged 13. Peter was sentenced to a five-year sentence under section 91 for his crime. In the secure children's home his family could not afford to visit him very often and he was not good on the phone. Once he was sentenced, social services closed his case and did not visit any more. His family said that although they loved him they could not look after him on release as they felt they could not cope with him, the house was over-crowded and his mother was ill. Peter would be due for automatic release when he was 15 and a half, although he was not sure if he could apply for release on home detention before then.

When Peter was 15, he came into contact with a lawyer who noticed that the sentence seemed to be too long. An appeal against sentence was lodged with the Court of Appeal.

The grounds of appeal made it clear that if the arguments put forward on Peter's behalf were successful, he should already have been released. This was because his solicitors felt that instead of a five-year sentence, Peter should only have been given a four-year sentence meaning he should have been released just after his 15th birthday.

As the Court of Appeal could not say when they would hear the case, Peter's solicitors wrote to his home social services asking whether they could identify a suitable package of accommodation and support approved by the YOT in case he was released. Peter's YOT had advised that MAPPA was discussing his case soon and it was thought likely his licence conditions would include an exclusion from his home area and a requirement to attend CAMHS. All of Peter's family were living in West London and he had no relatives outside of that area. Peter was worried about leaving secure accommodation after such a long time and said he would prefer to live in a children's home or his own place rather than foster care or a hostel placement. However, Peter accepted that it might be a bit hard to live on his own after being in prison for two years.

**Peter's appeal was successful. His sentence was reduced to four years and he was released immediately. Following legal action, his local authority accepted that he was a child in need who required accommodation. They provided him with accommodation as a looked after child on the day of his release. At first the accommodation was not suitable, but following representations, he was moved to suitable accommodation.**

# Step one: Identify the need for a resettlement package and work out when it is required

The table below shows the range of scenarios where a child/young person in the criminal justice system may need a resettlement package and when it should be available from.

## **Summary**

The first step is to identify the potential scenarios where children and young people in the criminal justice system will require help with resettlement. This section provides a brief overview of the range of scenarios so that practitioners can easily identify when resettlement needs are likely to arise.

Once the need for resettlement is identified, it is essential to work out when the resettlement package will need to be finalised. In some instances, there will be fixed date. In other instances, plans will need to be put in place on a contingency basis to allow for release or a community sentence by a judicial body such as a court or the Parole Board.

This section also briefly sets out how to work out the timetable for when a resettlement package will be required. It provides a check list to guide practitioners through the basic rules for release of children detained under sentence.

Children and young people in the criminal justice system may require accommodation in a range of circumstances. Often certain criminal justice decisions, such as a decision to impose a community sentence or direct early release will be dependent on suitable accommodation and support.

## When a resettlement package might be required

Location	In the community ...resettlement package for				In detention ...resettlement package for				
	Community sentence	Bail package	Licence conditions	After arrest	Release from sentence at fixed date	Early release from sentence on electronic tag	Early release from sentence on parole licence	Release from detention following no further action by police or as an alternative to police detention, following acquittal or collapse of criminal case or a sentence that results in immediate release	Release following successful appeal or successful bail application, including release from immigration detention by UKBA or following successful bail application
Scenario									
Timing	Package must be available in advance of sentence so it can be considered by YOT in PSR and by judge at sentence	Package must be available at first appearance so that bail can be granted	Package must be planned for in advance of release so licence conditions can be set and be available throughout period on licence to avoid breach or recall	Package must be available immediately to avoid unnecessary police detention	Planning should start from beginning of sentence, finalised in consultation with YOT and child/young person in advance of release and must be available from date of release	Planning should start from beginning of sentence, finalised in consultation with YOT and child/young person well in advance of early release decision and must be available from earliest date of release	Planning should start from beginning of sentence, finalised in consultation with YOT and child/young person well in advance of parole board decision and should be available from date of parole board decision	Planning should start from when the child/young person is first detained and package should be available as a contingency throughout, with liaison with criminal solicitors to ascertain likelihood of sudden requirement for resettlement package	Planning should start from first appearance/ as soon as the child/young person is detained and package should be available as a contingency throughout, with liaison with criminal/immigration solicitors to ascertain likelihood of sudden requirement for resettlement package

### In the community

Children and young people in the criminal justice system in the community may require suitable accommodation and support when:

- They are due to be sentenced and there is a possibility of a community sentence.
- They are serving community orders and find compliance so difficult without suitable accommodation and support that they become at risk of being breached and detained.
- The courts are considering whether or not to remand them to custody.
- They have been released from prison and are serving a period of supervision or a licence period.

#### *Children to be sentenced*

Where children are due to be sentenced and it is possible that a community sentence will be imposed, it will be important for a good resettlement package to be in place

in advance of sentence. This is especially important if the community sentence is contingent on a good resettlement package.

Planning should commence at the first appearance and the package should be finalised before the YOT writes a pre-sentence report recommending the appropriate sentence. It must be available on the day of the sentencing hearing.

### *Children serving community sentences*

Where children are serving community sentences, the resettlement package will often be vital to ensure the success of the sentence and prevent the young person from being breached, returned to court and sentenced to custody.

The package should be in place at point of sentence and should be continually reviewed throughout the community sentence, with contingency plans in place in case the package breaks down.

### *Children facing a remand to custody or police detention following arrest*

Where children are facing a remand to custody or police detention, it is essential that a package of accommodation and support is in place as soon as the possibility of detention arises and prior to any subsequent bail applications

An immediate referral should be made to the local authority to ensure that they are aware of the risk of detention. If no action is taken by the local authority and overnight detention seems likely and it is considered that this could result in the child suffering serious harm, a child protection referral can be made (section 47 Children Act 1989). If the prospect of overnight detention raises concerns about a child's general wellbeing, a child in need referral can be made to the local authority (section 17, Children Act 1989). It is a good idea to liaise with the child's solicitor or the police to ascertain how likely detention is and whether or not the police and YOT have made appropriate referrals

### *Children on licence or supervision following release from detention*

Where children are serving the licence or supervision period of their sentence, the resettlement package will often be vital to ensure the success of the sentence and prevent the young person being returned to prison.

Planning for the resettlement package should commence at the beginning of sentence and should be finalised well in advance of release. The package should be in place at point of release from custody and should be continually reviewed throughout the community sentence, with contingency plans in place in case the package breaks down. National Standard 9.10 specifically states that a Youth Offending Team practitioner must:

*Contribute to the effective implementation of the sentence plan with a specific focus on planning for resettlement. Ensure that resettlement planning takes places across the life of the whole order.<sup>6</sup>*

## **In police detention**

The police are required by law to transfer children to local authority accommodation unless impractical to do so (under the Police and Criminal Evidence Act (PACE) 1984 section 38(6) and the PACE Code of Practice). The National Standards 2012 require local authorities to put in place arrangements for managing requests for accommodation from the police (National Standards 2012, paragraph 3.56).

<sup>6</sup> National Standard 9.40 to 9.74 covers YOT responsibilities.

*Guidance on the safer detention and handling of persons in police custody* (second edition) was published in March 2012 by the National Policing Improvement Agency (NPIA) on behalf of the Association of Chief Police Officers (ACPO). It focuses on practical issues such as the appropriate standards of care for individuals held in police custody, with a section devoted to children and young people (section 9).

The guide states that the Children Act 2004 requires police authorities and chief officers to co-operate with arrangements to improve the wellbeing of children with regards to:

- their physical and mental health
- protection from harm and neglect.

It requires the custody officer to ensure that concerns arising from the detention of a child or young person are communicated to the appropriate agency.

Taken together, these duties require the police to only detain children and young people if it is absolutely necessary and to make referrals to social care if the children and young people in their care appear to lack appropriate accommodation and support. However, due to a breakdown in the referral process between police custody and local authority accommodation, children are often unnecessarily detained overnight in police cells.

The Howard League for Penal Reform's report *The overnight detention of children in police cells* (2011), found that 53,000 children aged under 16 were detained overnight in police cells in 2008 and 2009. The report also found that police training on the overnight detention of children is limited, police policies relating to children in custody are inadequate and laws designed to safeguard children are ineffective.

Seventeen year olds are currently treated as adults in police custody despite being regarded as children in other parts of the criminal justice system (part IV, clause 37, paragraph 15 of PACE 1984). Although this anomaly has been widely criticised, the Secretary of State for Justice has confirmed that there are no proposals to amend the law at present.<sup>7</sup>

Therefore where a young person is at risk of overnight police detention, practitioners should work on the assumption that alternative accommodation and support may be necessary to avoid this. An immediate referral should be made to the local authority to ensure that they are aware of the risk of overnight detention. If no action is taken by the local authority, overnight detention seems likely and it is considered that this could result in the child suffering serious harm, a child protection referral can be made (section 47 Children Act 1989).

If the prospect of overnight detention raises concerns about a child's general wellbeing a child in need referral can be made to the local authority (section 17 Children Act 1989). It is a good idea to liaise with the child's solicitor and/or the police to ascertain how likely detention overnight is and whether or not the police have made appropriate referrals.

### **In penal detention**

All children and young people in custody require careful resettlement planning to ensure effective rehabilitation. Sometimes, resettlement plans are an essential element of securing their release from detention.

Children and young people in the criminal justice system in the community are most likely to require suitable accommodation and support when:

<sup>7</sup> <http://www.theyworkforyou.com/wrans/?id=2012-07-16a.116315.h&s=speaker%3A11377#g116315.r0>

### *On remand*

- They may be released from detention following acquittal or collapse of criminal case, a successful bail application or a sentence that results in immediate release.

### *Under sentence*

- They are due for release from sentence at fixed date.
- They are due for early release from sentence on electronic tag.
- They are due for early release from sentence on parole licence.
- They may be released following successful appeal or successful bail application.

Appendix 1 sets out possible custodial sentences for children. Page 31 of this guide provides a checklist and brief overview of how release dates are calculated.

## **Release for young people on remand**

Children and young people on remand awaiting trial or sentence may be released at any point following a judicial decision.

Children and young people without suitable accommodation and support are especially vulnerable in these situations because they will be released immediately once there is no lawful authority for their detention. Therefore any timetable for resettlement planning falls away and accommodation must be found straight away.

Where children and young people do not have suitable accommodation and support, the local authority will have a legal duty to provide it. However, unless careful contingency planning has taken place, the opportunity for the young person to be consulted about the plan and to 'buy in' to it will be minimal. In turn, this is likely to impact on the success of the plan.

Therefore, where children and young people are on remand, it is essential to devise resettlement plans from entry into custody which can be activated at short notice. It is also essential to identify potential opportunities for early release. This may involve liaising with criminal solicitors and youth offending teams.

## **Release for children and young people in immigration detention**

It is now extremely rare for foreign national children to be held in immigration detention. However, there will be some cases where a foreign national child enters the youth justice system and turns 18 whilst they are serving a custodial sentence (for example a refugee, child of a refugee with leave as a result of a family reunion, an asylum seeking child, a child with discretionary leave or indefinite leave to remain, or a child with no immigration status). In these cases, practitioners need to be aware of the importance of that young person being able (and assisted) to access immigration legal advice.

The UK Border Agency (UKBA) is responsible for immigration detention and, wherever possible, alternatives to immigration detention must be used. So these young people should be treated in the same way as other young people as far as preparation for release and arrangements for resettlement are concerned. If a practitioner becomes aware of a child who is detained, it is imperative that the child access immigration representation immediately. However, it is important to remember that children whose age is disputed are sometimes detained because they are being treated as adults. These young people require urgent specialist legal advice from an immigration and/or community care lawyer.

As with other adults, young people (over 18) who are foreign nationals may be detained for immigration purposes following a prison sentence, but this should only be if there are no suitable alternatives to detention. Immigration detention has its own legal framework and the unlawful detention of young adults is frequently challengeable. Young people in immigration detention have the right to apply for immigration bail and advice to assist them with this. As with an application for bail before the criminal courts, a suitable release package must be in place if an application is to succeed.

### **Contingency planning throughout the trial process**

Children and young people going through criminal proceedings can be released suddenly and without warning. For instance, a prosecution case may collapse or the child or young person may be acquitted. Where this takes place and a child or young person has been remanded to custody there will no longer be any lawful authority for continued detention and they will be free to go. This means that planning should commence from the first appearance and contingency plans should be in place for any child or young person on remand going through the criminal trial process. Liaison with the child or young person's solicitor is always a good idea to ensure that a practitioner is aware of the likelihood of a possible sudden release. If the child or young person is also a foreign national it will also be essential to liaise with their immigration solicitor.

### **Preparing for a bail application or sentence**

Children and young people who are detained but not serving a sentence, or who are waiting for an appeal to be heard, are entitled to make a bail application. Applications are usually made on their behalf by their solicitor and may be at short notice. Children and young people may also find that their sentence means they are released immediately or at very short notice.

As soon as a practitioner is aware of the date of a bail application or sentencing hearing, steps should be taken to ensure that the contingency release plan will be available on that day. Children or young people facing custody must have a pre-sentence report before a discretionary custodial sentence can be imposed (Criminal Justice Act 2003, section 156). It is essential that the resettlement package is finalised before the bail application or pre-sentence report is completed so that it can be presented to the court and taken into account when the judge is considering the feasibility of release on bail or a community sentence.

### **Automatic release on a fixed date**

Children and young people will be automatically released in the following circumstances:

- If sentenced to a DTO – where they are not eligible to apply for early release or have been refused early release (see page 29).
- If sentenced under section 91 Power of Criminal Courts (Sentencing) Act 2000 (PCC(S)SA 2000) – where they are not eligible to apply for Home Detention Curfew (HDC) or have been refused HDC (see page 30).
- If sentenced under section 228 Criminal Justice Act 2003 (CJA 2003) imposed after 14 July 2008.

Where a child or young person has a fixed, automatic release date (ARD) with no option for early release, planning should start from beginning of sentence. It should

be finalised in consultation with YOT and child/young person in advance of release and must be available from date of release.

There is a clear timetable set out in the National Standards confirming what action should be taken by various professionals to ensure effective resettlement planning. See step 7: 'making it happen' (page 68).

### **Children and young people who may be released early on an electronic tag**

Children and young people may be released early on an electronic tag in certain circumstances where they are serving a DTO (see below) or a section 91 sentence (see pages 33). The guidance for working out whether a child or young person is eligible for early release and then whether or not they meet the criteria for release is complex and practitioners assisting children and young people should always refer to the relevant guidance outlined at the end of this section. The decision to grant early release is made on behalf of the Secretary of State. In the case of children detained in YOIs it is delegated to the Governor and in the case of children detained in Secure Children's Homes (SCHs) and Secure Training Centres (STCs) it is delegated to a member of the placements team in the Youth Justice Board. The YOT will have a role in assessing the suitability of the child/young person for release and the suitability of the release plan.

Where a child or young person is eligible to be considered for early release, planning should start from beginning of sentence. The package should be finalised in consultation with YOT and the child or young person well in advance of early release decision and must be available from earliest date of release.

As liberty is at issue, a child or young person is entitled to legal advice to assist them to understand their sentence, their earliest possible release date and the criteria for release.

### **Early release from a DTO**

Early release is not available for four or six month DTOs. There is a presumption of early release on electronic tag for all children serving DTOs of eight months or more. In 2010–11, 3,718 children were sentenced to a DTO; therefore these provisions apply to considerable numbers (as per quarterly statistics released by the Ministry of Justice and Youth Justice Board, 2012: <http://www.justice.gov.uk/statistics/previous-stats/sentencing-quarterly>).

Early release is available:

- In the case of a DTO of eight months, or more but less than 18 months, one month before the halfway point of the order.
- In the case of a DTO between eighteen months or more, one month or two months before that point (section 102(4) of the PCC(S)A 2000).

In certain circumstances, an application can be made to the youth court for late release by one month in the case of a DTO of eight to 12 months or two months in the case of a DTO of 18 months or more (section 102(5) PCC(S)A 2000).

Children and young people who receive a DTO of less than eight months are not eligible for early or late release.

The early and late release process, including the criteria for deciding whether a child or young person should be released early or late is set out in two sets of government guidance (Joint Home Office/LCD/YJB Circular: *The Detention and*

*Training Order*, issued in 2002 by the Home Office and YJB, 9 February 2000 and *The detention and training order: Revised guidance on electronically monitored early release* issued in 2002 by the Home Office and YJB). The guidance is comprehensive but must also be read in light of the legal principles set out at section 1 of this guide.

There is a presumption of early release for all children serving DTOs of eight months or more, except for those serving sentences for serious offences such as sexual offences, arson with intent to endanger life, wounding with intent and possession of a firearm. The presumption can be rebutted if the child or young person is considered to have displayed violent, dangerous or destructive behaviour in the secure establishment or to have made 'exceptionally bad' progress against the training plan.

Early release is subject to suitable accommodation and support being in place. However, Home Office guidance governing the early release scheme specifically states that:

*Circumstances outside the trainee's control which may suggest that early release could present a higher risk of reoffending cannot be used to justify withholding early release or applying for late release. Such circumstances e.g. lack of suitable accommodation, family problems, etc., should have been identified earlier and addressed by the supervising officer. (Paragraph 2.79 of Joint Home Office/LCD/YJB circular: the detention and training order 9 February 2000).*

Early release and resettlement issues should be considered at the initial planning meeting, throughout the sentence planning process, at the release preparation meeting and the final review meeting, as set out in the National Standards.

The criteria for the denial of early release should be discussed with the child or young person at the initial planning meeting and at each subsequent review meeting. The child or young person and their family or carer must be kept informed of where they stand in relation to likelihood of denial of release (paragraph 18 of the detention and training order: revised guidance on electronically monitored early release, 2002).

A child or young person is entitled to seek advice from a lawyer to challenge the refusal of early release. This should be done as soon as it is known that early release is not likely to be granted.

### **Early release on Home Detention Curfew (HDC)**

HDC (section 35 of the Criminal Justice Act 2003) may be available for those serving section 91 sentences if:

- the sentence is three months or over but less than four years
- the index offence is not an 'excluded' offence
- the child/young person does not have a history of particular non-compliance with licence conditions; and
- the child/young person has 14 days or more left before the halfway point of their sentence (ARD).

Even where the child or young person is eligible to be considered for HDC, the offence may mean they are presumed unsuitable unless there are 'exceptional circumstances'. However, children and young people who are presumed unsuitable may still apply for HDC and may seek legal advice on whether a refusal to release is lawful. The maximum period of release on HDC is 135 days. If the sentence is shorter than 18 months the maximum HDC period is calculated as a quarter of

the total sentence. Unlike DTO early release, there is no presumption in favour of HDC being granted. Release will only be granted following a risk assessment and provided that suitable accommodation is in place.

The risk assessment for HDC must where possible be commenced ten weeks before the young person's eligibility date. The process and forms for the assessment are contained in PSO 6700. A report by the youth offending team must also be completed as part of this process.

*Guidance as to how the scheme operates is available (PSO 6700; PSI 31/2003; Extension of the Home Detention Curfew Scheme to Juveniles Serving Sentences of Detention under Section 91 of the Powers of Criminal Courts (Sentencing) Act 2000, issued by the YJB and Home Office, 7 July 2003)<sup>9</sup>. It is essential to check the guidance where a young person is serving this kind of sentence.*

A child or young person is entitled to seek advice from a lawyer to challenge the refusal of early release. This should be done as soon as it is known that early release is not likely to be granted.

### **Release by the parole board on licence after minimum term or following recall**

Children and young people may be released following a parole board decision. The Parole Board may direct release in the following circumstances:

- After the minimum term for those serving indeterminate sentences, including indeterminate sentences for public protection, a discretionary life sentence or detention during Her Majesty's Pleasure (see Appendix 1 for all sentences available to children).
- After the halfway point of an extended sentence for public protection imposed before 14 July 2008.
- Any point following recall in the case of all indeterminate sentences, section 91 sentences and extended sentences for public protection.

For indeterminate sentenced children and young people, release will only ever be directed by the Parole Board following an oral hearing. However, those serving section 91 or section 228 sentences who have been recalled may be released following a paper review. If these children and young people are not released on the papers they will be entitled to an oral hearing in accordance with the Parole Board Juvenile Oral Hearings policy.

If the Parole Board does not direct release, the child or young person will be entitled to a review at regular intervals. For those serving indeterminate sentences, either at first instance or following recall, the Parole Board will review suitability for release (or open conditions) at intervals of no more than two years – the precise period is set by the Secretary of State. For those serving determinate sentences that have been recalled, the Parole Board will review suitability for release every year until the sentence expires.

The Parole Board timetable is set out in PSO 6000. The test for release has been determined by case law but is usually informed by directions issued by the Secretary of State to the Parole Board<sup>10</sup>.

<sup>9</sup> See also the fact sheet by the Prisoners Advice Service (PAS) available at: <http://www.prisonersadvice.org.uk/DOCS/INFORMATION/HDC.pdf>  
<sup>10</sup> In considering the cases before them, members of the Parole Board are guided by directions issued by the Secretary of State under section 32(6) of the Criminal Justice Act 1991 or section 239(6) of the Criminal Justice Act 2003. These are available here: <http://www.justice.gov.uk/offenders/parole-board/sos-directions>

Resettlement planning should start from beginning of sentence or recall, be finalised in consultation with YOT and child/young person well in advance of Parole Board decision and should be available from date of Parole Board decision. If the decision is to be on the papers, the release plan must be set out clearly in the YOT's report for the Parole Board.

In all instances the Parole Board's primary aim is to protect the public and, in making its decision, it is required to consider the suitability of the proposed release plan. Therefore, release cannot be directed unless there is a suitable package of support and accommodation identified for the child or young person that meets both their needs and manages their risk: generally social services will be responsible for assessing a child or young person's needs and devising a package that YOT/MAPPA consider will also best manage risk. This must be agreed, available, funded and set out clearly in the YOT's parole assessment report. Under s.325 of the Criminal Justice Act 2003, local authorities are required to co-operate with criminal justice agencies to protect the public.

It is not a two stage process where the Parole Board decides whether release is suitable in principle and then requests a package to be put together. Regardless of whether or not YOT is recommending release, the package YOT considers would best manage risk must be submitted.

There is limited guidance available for YOTs but Probation Circulars (PCs) cover equivalent scenarios for adult prisoners. It cannot be the case that less exacting standards apply to children. PC 4/2007 *Parole assessment reports* sets out exactly what is required in a parole assessment report.

At paragraph 9 under the heading, 'Risk Management Plans', the circular requires that the risk management plan 'should outline how each risk will be managed in the community and, where relevant, the management actions by other agencies under the MAPPA. It must be sufficiently detailed so that the Parole Board can have confidence that strategies are in place to manage the offender safely in the community.' At paragraph 10, the circular warns that the plan 'must be submitted in the report regardless of whether or not the report writer is recommending parole.' Further guidance is provided in PC 34/2004. At paragraph 8.2 under the heading 'The Risk Management Plan', the circular clearly states that:

*The Board cannot decide to release a prisoner unless an adequate release address has been identified. The home probation officer cannot wait to see whether parole is granted – or that the panel is minded to grant it – before looking for a suitable address.*

Sourcing accommodation for children and young people subject to parole should not be a barrier to their resettlement. Professionals can use the law to help secure accommodation for the child or young person they are working with.

All children and young people are entitled to representation for parole and their solicitor should be proactive in taking steps to make sure the hearing is effective by ensuring an effective resettlement package in place well before the parole decision is due to be made.

### Release provisions for children detained under sentence – checklist

**Release provisions are complex; this checklist is a basic overview. Detailed guidance is available (see YJB Release and Recall Guidance, PSO 6650, Parole Board guide for Juveniles).**

#### *Automatic release*

- All children and young people serving the following fixed sentences will have an Automatic Release Date (ARD) calculated for their sentence:
  - o Detention and Training Orders (DTOs)
  - o section 91 sentences
  - o section 228 sentences for public protection imposed after 14 July 2008.
- Where a child or young person has an ARD, they cannot be detained past this date. The only exceptions to this are:
  - o Where additional days have been lawfully added by an independent adjudicator to a section 91 sentence or a section 228 sentence.
  - o Where additional days have been lawfully added by a court to a DTO under the late release provisions.
  - o Where the child or young person is subject to immigration control and held under immigration detention powers (but they do have a right to apply for bail).
- If the ARD falls on a weekend or public holiday, the child or young person must be released on the last working day prior to that point.
- Where a child or young person is serving a DTO or section 91 sentence, early release may be possible.

#### *Early release from fixed sentences*

- Children and young people serving the following fixed sentences are eligible for early release under an electronic tag:
  - o DTOs of between eight and 24 months
  - o section 91 sentences of between three months and less than four years provided the index offence is not an 'excluded' offence.
- There are complex rules governing whether or not a child or young person should be granted early release. These rules need to be consulted in each case. The basic rules are that:
  - o there is a presumption in favour of early release for the majority of children serving a DTO
  - o in all cases of early release, the young person will require suitable accommodation and support in place in advance of the decision being made for early release.

#### *Release by Parole Board from indeterminate sentences*

- Children can be sentenced to the following indeterminate sentences where there is no fixed release date:
  - o discretionary life sentences (section 91 PCCSA 2000)
  - o indeterminate sentences for public protection (section 226 CJA 2003)
  - o detention at Her Majesty's Pleasure (section 90 PCCSA)
- In these cases, release can only take place where it has been directed by the Parole Board.
- The Parole Board must have a suitable package of support and accommodation identified for the child or young person that both meets their needs and manages their risk.

## Calculating release dates and general principles of sentence calculation

Sentence calculation can be complex. A detailed explanation of the test for release in each instance is beyond the scope of this guidance which provides a brief overview of the release. Practitioners investigating release mechanisms for a child or young person should always consult the key legislation and guidance referred to at the end of this section.

Within two working days of a child or young person being sentenced, sentence calculation should be undertaken to ascertain the ARD and any relevant early release dates. For those in YOIs this should be completed by the casework department. For those in SCHs or STCs, this should be completed by the Youth Justice Board Placement and Casework Service (National Standard 2012 paragraph 9.5).

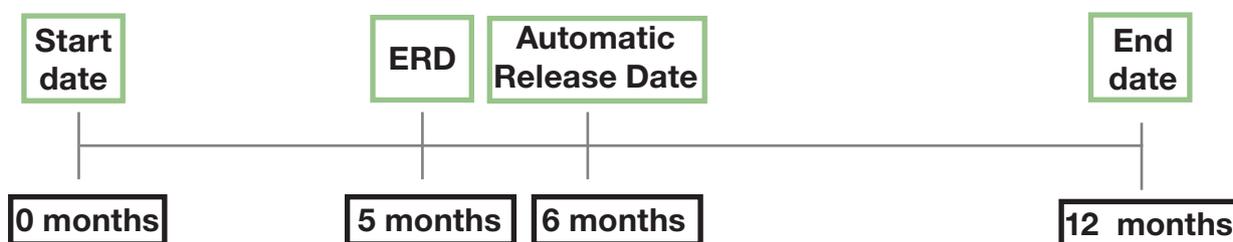
It is important to check that a sentence calculation is correct. The fact that a sentence has been calculated wrongly does not mean that the child or young person will be released on the date they have been provided with. In exceptional cases a child or young person may be able to argue that this should happen (PSO 6650, chapter 13).

If a release date or early release date falls on a weekend or public holiday, the child or young person must be released on the last working day prior to that point. For example, if the ARD falls on Thursday 26 December, they must be released on Tuesday 24 of December as Christmas day and Boxing day are both bank holidays. The exception to this is where a child or young person serving an indeterminate sentence has been directed for release by the Parole Board following the expiration of their minimum term.

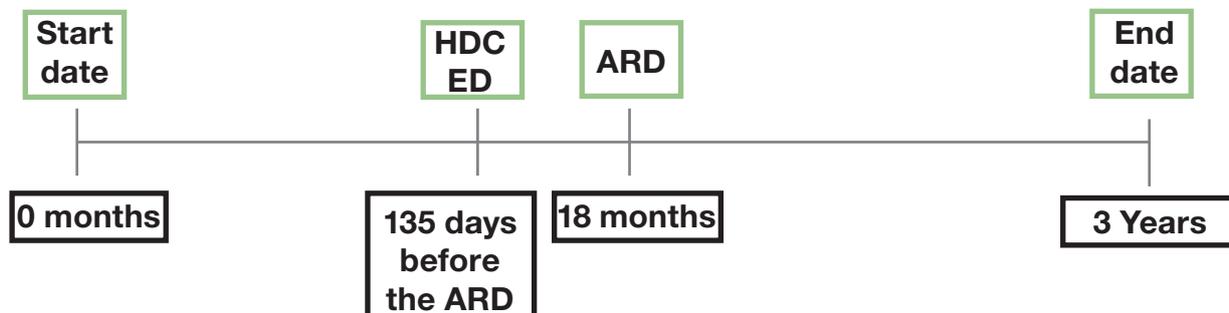
It is unlawful to detain a child or young person past their release date unless additional days have been lawfully added to a section 91 or section 228 sentence by an independent adjudicator or following a successful application for late release on a DTO (YOI rules 58–60B, 63 and 65 and PSI 47/2002 and Section 102(5) PCC(S)A 2000.

The following depict examples of typical sentence calculation dates:

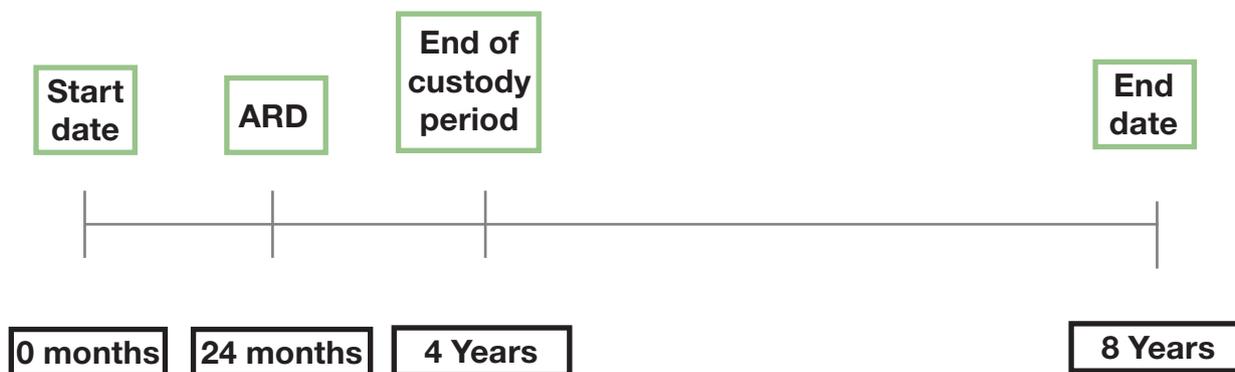
1. A child/young person serving a 12 month DTO:



2. A child/young person serving a three year sentence under section 91 PCC(S) A 2000:



3. A child/young person serving an eight year sentence under section 228 Criminal Justice Act 2003 imposed on or after 14/07/2008 comprising a four year custodial period and a four year extended licence:



#### Key legislation and case law:

- Section 9 of ACPO and NPIA's Guidance on the *Safer Detention and Handling of Persons in Police Custody* (second edition, 2012)
- Paragraph 3.56 National Standards 2012
- Sections 156 and 228 Criminal Justice Act 2003
- Sections 90, 91 and 102 Powers of Criminal Courts (Sentencing) Act PCC(S) A 2000
- PSO 6000: Parole, release and recall
- PSO 6700: Home detention curfew
- PC 4/2007 and PC 34/2004 – parole assessment reports
- Sections 9 and 10 National Standards for Youth Justice Services 2012
- Youth Justice Board (2011) Release and recall, guidance for youth offending teams

# Step two: Public protection considerations – Bail conditions, licence conditions and MAPPA

## Summary

- Step two requires practitioners to consider public protection limits on the release plan. These need to be explored at an early stage to prevent plans being changed at the last minute or to allow sufficient time for the young person to challenge public protection requirements that are disproportionate or unnecessary
- This section provides an overview of licence, supervision and bail conditions. It also describes the role of MAPPA
- It explains the legal framework that applies to decisions about public protection which means they must be both necessary and proportionate
- It reminds practitioners that children and young people should be consulted in advance about public protection restrictions.

Resettlement plans need to take account of restrictions imposed by the criminal justice system.

All children sentenced to detention will be released initially under a set of conditions set by the Secretary of State that they must comply with or risk being returned to detention. For those sentenced to DTOs, these are called 'supervision notices' (section 103 PCC(S)A 2000). For those serving all other sentences, they will be released on licence (section 250(1) of the Criminal Justice Act 2003). Bail conditions will be set by the police or a judge (section 3(6) Bail Act 1976).

## Licence and supervision

Those on licence can be automatically recalled to prison by the Secretary of State for Justice if they breach the terms and conditions. The recall will be initiated by the YOT and the child or young person does not have to go to court before being returned to prison. This contrasts to the position of those on supervision who must be brought before a court before being recalled to custody.

Licence conditions and supervision notices are usually set by the Secretary of State who generally delegates this power to the Governor in YOIs and the YJB placements team in the case of SCHs and STCs (National Standards 2012 9.62 and 9.77). The exception is where the young person is considered by the Parole Board, in which case additional licence conditions may be imposed. Any condition can be varied upon application by the body that set it.

Certain restrictions are common to all licences and supervision notices (standard conditions). However, in many cases, additional licence conditions can be requested (see page 35).

YOTs will usually be consulted in relation to additional licence conditions. In turn, YOTs will often consult MAPPA meetings (see page 37 for more information about MAPPA) before formulating recommended conditions (YJB Case Management Guidance Custodial interventions and community resettlement (2010) p.34ff).

All proposed restrictions should be identified as early as possible, whether they relate to proposed bail conditions, licence conditions or restrictions proposed by MAPPA. Chapter 14, paragraph 14.8.1 of PSO 6000 advises that additional conditions should be requested 14 days in advance of release, along with the reasons for the request.

For foreign national prisoners a licence must be issued at least seven days prior to the normal date of release. The licence must be explained to the prisoner, signed and dated and retained with the prisoner's records.<sup>11</sup>

Article 8 of the ECHR requires that a child or young person should be consulted and allowed an opportunity to make representations as to why the restrictions are unnecessary for public protection or will have a disproportionate adverse impact on their personal life. A child or young person is entitled to consult a lawyer about the imposition of public protection restrictions.

### **The content of licence conditions and supervision notices**

Licence conditions are imposed on release for all sentences other than DTOs and when a child or a young person under the age of 22 is being released towards the end of a section 91 sentence. Supervision notices are imposed for children and young people released on DTOs and where a young person under the age of 22 serving a fixed term sentence is released with less than three months on licence to go.

Conditions of release should be considered throughout a sentence through the sentence planning process (National Standards 2012, 9.17 and 9.12). When considering release plans, it will always be essential to think about what the conditions will be, especially if entry to certain areas is prohibited or contact with certain people is restricted.

The provision of accommodation cannot be arranged in isolation from the proposed conditions and it will be essential for the YOT to be consulted about the proposed release plan to make sure it is compatible with any conditions of release.

Similarly, the YOT will need to be consulted to ensure the release plan is compatible with the needs of public protection. For instance, if a history of drug use is a major risk factor for a young person, then a placement where there are known users will be totally unacceptable.

### **Standard and additional conditions**

There are core standard conditions that are imposed in every case. There is also a menu available of additional conditions that can be imposed if necessary.

<sup>11</sup> See paragraph 1.6 of PSI 65/2011

A menu of standard and additional licence conditions, together with guidance as to when certain conditions can or should be imposed is available from a range of sources.<sup>12</sup>

There are six standard licence conditions for determinate sentences:

1. To keep in touch with your supervising officer in accordance with any instruction you may be given.
2. If required, to receive visits from your supervising officer at your home/place of residence.
3. To reside permanently at an address approved by your supervising officer and notify him/her in advance of any proposed change of address.
4. Undertake only such work (including voluntary work) approved by your supervising officer and notify him or her in advance of any proposed change.
5. Not to travel outside the United Kingdom unless otherwise permitted by your supervising officer (permission for which will be given in exceptional circumstances only) or for the purpose of complying with immigration/ deportation requirements.
6. To be well behaved, not to commit any offence and not to do anything which could undermine the purpose of your supervision, which is to protect the public, prevent you from reoffending and help you to resettlement successfully into the community.

When a child or young person is serving a sentence under section 90 of the PCC(S) A or section 226 of the CJA 2003 an additional standard licence condition is imposed:

*He/she shall be well behaved and not do anything which could undermine the purposes of supervision on licence which are to protect the public, by ensuring that their safety would not be placed at risk, and to secure his/her successful reintegration into the community.*

PSI 07/2011 sets out the available licence conditions and provides advice as to when particular additional licence conditions might be considered necessary and proportionate.

Additional requirements include:

- contact requirement e.g. attend appointments with a medical practitioner
- prohibited activity requirement e.g. not to use the internet
- prohibited residency requirement e.g. not to stay overnight in the same house as a child
- prohibited contact requirement e.g. not to contact the victim or members of the victim's family
- programme requirement e.g. participate in an anger management programme
- supervision requirement e.g. report to a named police station daily
- non-association requirement e.g. not to associate with members of a named gang
- drug testing requirement.

<sup>12</sup> This is available at [www.yjbstandards.org/national/resources/documents/list\\_noms.doc](http://www.yjbstandards.org/national/resources/documents/list_noms.doc) and as above (footnote 49) p. 34ff of <http://www.justice.gov.uk/downloads/youth-justice/improving-practice/CaseManagementGuidanceSection7Custodialinterventionsandcommunityresettlement.pdf>

All victims of sexual or violent crimes for which the young person who committed the crime received a custodial sentence of 12 months or more must be offered the opportunity to be consulted on possible licence conditions (section 69 of the Criminal Justice and Courts Services Act 2000 as amended by section 35 of the Domestic Violence, Crime and Victims Act 2004). YOT are required to be proactive in seeking the input of the victim through the relevant victim liaison officer. In practice, conditions attached to supervision tend to follow the same pattern as licence conditions.

### **Additional supervision for some young people released under the age of 22**

Occasionally people serving a section 91 PCC(S)A 2000 sentence will be recalled and not released until some time on or after three months before the very end of their sentence. These young people, on release at the end of the sentence, will be subject to a further three months of supervision.<sup>13</sup> This functions in a similar way to a DTO notice of supervision.

There is no legal authority for this provision to be applied to young people recalled and due to be released at the very end of an extended sentence for public protection under section 228 Criminal Justice Act 2003.

### **MAPPA and the release plan**

MAPPA was introduced in order to facilitate the requirements of sections 325–327 of the Criminal Justice Act 2003 in each of the 42 criminal justice areas in England and Wales. These sections require local authorities and other statutory agencies to co-operate with justice services such as police and probation to protect the public.

The arrangements in practice amount to single agency decisions and regular multi-agency meetings whereby individual cases are assigned a level of risk and discussed. There are three MAPPA categories:

- Category 1: Registered sex offenders.
- Category 2: All those who have received a custodial sentence of 12 months or more in prison for a sexual or violent offence and whilst they remained under supervision during the licence period.
- Category 3: Anyone else who poses a 'risk of serious harm to the public' who has received a conviction and whose risk would be better managed in a multi-agency setting.

Relevant agencies must conduct a risk assessment of each person and allocate them to a tier of multi-agency management:

- Level 1: The normal inter-agency management of the young person in the community by one agency, with some liaison
- Level 2: MAPPA meetings will be held where the child/young person's management will be discussed between various parties involved in their case
- Level 3: Essentially the same as level 2, except that senior management representatives will be in attendance and greater resources are expected to be used in the management of the child/young person.

MAPPA arrangements are designed to protect the public, including previous victims of crime, from serious harm by sexual and violent offenders. Guidance as to how MAPPA operates generally (MAPPA 2012 Guidance) and specifically in relation to young people (section 12 of MAPPA 2012 Guidance) is available.

<sup>13</sup> Under section 65 of the CJA 1991; this provision will be amended by section 80 LASPOA 2012 to allow for additional supervision for those serving DTOs.

YOTs are advised that MAPPA should be kept informed throughout the process for all young people who are managed under MAPPA. There is a requirement for YOTs to inform the 'single point of contact' within the local police of the release arrangements for these children or young people.

MAPPA guidance states that it is 'good practice' for people to know that they are being managed through MAPPA, what MAPPA is, and what this means for them (section 12 of MAPPA 2012 Guidance). There is a MAPPA leaflet called Information for Offenders which is suggested for this purpose and in adult cases the Offender Manager (equivalent to the YOT) is responsible for this.

The guidance also explicitly states that it 'may be helpful to invite the offender to write down, or pass on, information for discussion at a level 2 or level 3 meeting, if he or she is aware of being managed at that level.' Therefore, where possible, children and young people should be consulted and encouraged to provide their views.

MAPPA meetings are often only held on fixed dates, although meetings can be arranged outside of these times. It is therefore essential that cases concerning children and young people due for release are discussed well in advance to allow time for them to be consulted, and if appropriate, make representations.

In some cases, where a child or young person is assigned to the highest risk level, this may enable additional funding to be secured.

One of the problems that some children and young people have experienced with MAPPA is its lack of openness and accountability. The MAPPA guidance specifically emphasises the fact that MAPPA does not exist as a single legal entity with the power to disclose information discussed at meetings or to be held accountable. For instance, at paragraph 13.38 it states:

*MAPPA is not an official body in itself but a set of arrangements which exist to assess and manage the risks posed by offenders. Therefore, no individual MAPPA agency has the authority to release confidential information shared at the MAPPA meetings.*

The guidance goes on to distinguish between documents held by individual bodies that attend the MAPPA meetings (such as probation) and information generated by the meetings themselves (such as minutes of the meetings). Therefore, if a child or young person is concerned about the outcome of a MAPPA meeting, he or she may make a specific request for disclosure from any of the bodies that attended the meeting. That body will have its own disclosure processes that must be followed in line with the Data Protection Act 1998. However, if the child or young person wishes to see the minutes of the meeting, the Chair of that meeting will consider the request.

The guidance makes it clear that in the absence of a formal request under the Freedom of Information Act 2000, the most that is likely to be disclosed is a summary of the meeting. However, the content of Multi Agency Public Protection meeting summaries is set out at paragraph 13.48 of the guidance. A child or young person is entitled to ask for this and legal assistance may be available under the legal aid scheme if this is considered essential to sentence and resettlement planning. However, there is no legal aid available for appeal to the Information Commissioner.

The MAPPA guidance sets out its complaints procedure at Chapter 29. Again, the guidance stresses that MAPPA does not exist for such purposes and suggests that although complaints can be directed at the MAPPA chair, they will be passed on to the relevant lead agency. This appears, at present, to be the only way to hold

aspects of the MAPPA process to account, although the decisions made at MAPPA meetings are essentially decisions made by public bodies which individually can be held to account through judicial review.

### **The legal framework for public protection**

Supervision requirements and licence conditions are governed by Article 8 of the ECHR. Licence conditions are not designed to be punitive; rather they are for the purposes of risk management and public protection (*R(on the application of Carman) v Secretary of State for the Home Department* [2004] EWHC 2400 (Admin)).

The starting point is a thorough understanding of what the right to a private and family life means. Article 8 is a qualified right which means that the restriction on private and family life must be balanced with the legitimate reason for the restriction. In the case of licence conditions, the legitimate reason for the restriction is public protection. Therefore, proposals must be both necessary to protect the public and proportionate.

Article 8 of the ECHR states:

*Right to respect for private and family life*

*1 Everyone has the right to respect for his private and family life his home and his correspondence.*

*2 There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*

The scope of Article 8 is broad, as stated by the court in *Pretty v United Kingdom* 35 EHRR 1 (paragraph 61):

*The concept of 'private life' is a broad term not susceptible to exhaustive definition. It covers the physical and psychological integrity of a person. ...Article 8 also protects a right to personal development, and the right to establish and develop relationships with other human beings in the outside world.*

This means that restrictions that affect a child or young person's physical or personal development, family contact or other aspects of their private life must be considered carefully to make sure they are necessary and proportionate. Necessary means that no other means of managing a particular risk is available or appropriate; and proportionate means that the restriction on the child or young person's liberty is the minimum required to manage the risk.

The ECHR has repeatedly held that ‘the decision-making process involved in measures of interference must be fair and such as to afford due respect to the interests safeguarded by Article 8’ (*Turek v Slovakia* (2006) 44 EHRR 861 at paragraph 111). This means that where the issue engages Article 8, the affected person must be sufficiently involved in the decision-making process to allow them to protect their interests. In order for participation to be reasonably effective, it is accepted that sufficient disclosure must be made and there should be reasonable equality of arms (see *McMichael v United Kingdom* (1995) 20 EHRR 205).

#### **Key legislation and guidance**

- Article 8 of the ECHR
- Section 103 PCC(S)A 2000
- Section 250(1) of the CJA 2003
- PSI 07/2011
- 9.17 and 9.19 National Standards 2012
- Youth Justice Board (2011) Release and recall, guidance for youth offending teams
- MAPPA Guidance 2012

#### **Case study: Adam**

Adam had no previous convictions but was sentenced under section 91 for a serious sexual offence when he was 15 years old. He suffered from Aspergers syndrome and the sentencing Court acknowledged that his culpability in the offence was lessened due to his age and his difficulties. In secure, he did really well both with education and offending behaviour work. He was released at the mid point of his sentence on licence. His family supported him throughout. In the community he did really well and over time, he managed to get into college. When he was aged 17 and a half he met a girlfriend who was aged 18. He told his YOT worker about his new girlfriend and disclosures were made to his girlfriend. In turn, his girlfriend told her mother about it.

They remained together. However, social services were concerned that the girlfriend had a little brother. Even though Adam was never left alone with the little brother, social services considered it essential to disclose his previous convictions to all of his girlfriend’s family. Adam was told that if he or his girlfriend did not make the disclosures within seven days, social services would do it. Adam was very concerned about a large number of people finding out about his offences and was also content to agree not to have any unsupervised contact with the little brother. Adam felt that he would rather break off the relationship than risk his past affecting his future.

Detailed legal representations were made to social services arguing that Article 8 required them to conduct a careful balancing exercise, based on the actual risk of harm and the need for children to be protected. It was argued that as Adam’s risk of reoffending was low and the child could be protected in other ways, there was no need for the whole family to be informed. As a result, it was agreed that the nature of the disclosure would be discussed with Adam first. It would then be made through the YOT simply to the parents of the girlfriend and nobody else, provided Adam agreed to have no unsupervised contact with the younger brother.

# Step three: What the child or young person wants and explaining the three legal alternatives for accommodation and support

## Summary

Children and young people should always be consulted about their resettlement plans. This is critical to the success of the plan. Consultation needs to be on a fully informed basis. This means that the child or young person needs to understand the full range of possibilities and the implications of the different legal routes that underpin the options.

Where possible a child or young person being released from custody should be provided with an opportunity to be released in advance on temporary licence or an escorted absence to visit their release address or make other resettlement plans.

This section is designed to equip practitioners with sufficient knowledge to provide a child with a general overview of the three legal alternatives for accommodation: accommodation under a private arrangement, under the Children Act 1989 and under the Housing Act 1996.

A joint report by HMIP and the YJB, Children and young people in custody (2010 – 2011) (HMIP and YJB, 2011) found that less than half of children and young people told the Inspectorate that they had had a say in what would happen to them on release.

## Consultation with children and young people

There is a general duty to take children and young people's wishes and feelings into account where decisions that affect them are being made. This duty is underpinned by Article 8 of the ECHR, the right to a private and family life, which also includes a right to personal and social development. In the case of a child, this right is informed by Article 12 of the UNCRC which requires that any child who is capable of forming his or her own views has the right to express those views freely in all matters affecting him or her.

The National Standards explicitly state that it is the responsibility of secure estate staff to ensure the child or young person's views on their resettlement arrangements are considered. They must also ensure that the child or young person understands all the resettlement arrangements that are in place (taking into account speech, language and communication issues) (National Standards 2012 9.57 and 9.61).

Where a child or young person is looked after under the Children Act 1989, section 20(6) requires the local authority, so far as is reasonably practicable and consistent with the child or young person's welfare, to take the child or young person's wishes and feelings into account in the provision of accommodation.

## Release on temporary licence (ROTL), escorted absences and mobilities

If a release plan is to be successful, it is important that the child or young person is able to engage with it. This may mean giving them an opportunity to see the proposed placement address or activities in advance of release. Some may even need to attend a placement for interview.

There is a duty to ensure that children and young people are consulted in relation to their release plans (National Standard 2012 9.57). However, it is hard for them to provide their views on a placement they have never seen.

All children and young people can in theory apply to leave custody temporarily for resettlement reasons. If possible, it is a good idea for a young person to familiarise themselves with their new home. It is difficult to think of an adult friend or relative that would contemplate moving into a new home without visiting it first, yet professionals regularly expect children and young people to do this on release from prison.

The availability of a temporary release from custody for resettlement purposes will differ according to the child or young person's sentence and where they are placed. In all cases, it will be subject to a risk assessment<sup>14</sup>.

For children based in SCHs and STCs, the YJB has a policy on 'mobilities', although it is unclear whether this policy is applied<sup>15</sup>. Children serving any sentence can be released on a temporary basis in the company of secure staff. In all cases, the establishment will need to submit an application to the Youth Justice Board (YJB) placements team outlining exactly how any risk will be managed. The Secretary of State will only approve the application and authorise the mobility if they are satisfied that it is safe to do so.

For children in YOIs, release for resettlement will depend on the sentence. Young people can either be released on a temporary licence (called a release on temporary licence or ROTL) or under an 'escorted absence'. It is usual for both forms of release to involve being released in the company of an officer although technically a ROTL can involve the child or young person being trusted to leave the establishment and return on their own.

Governors are required to utilise the opportunities under ROTL arrangements to explore work and accommodation opportunities, promote rebuilding of family relationships and where possible, run pre-release courses to assist in the resettlement of children and young people (PSI 08/2012, paragraph 5.27).

The rules for ROTLs are set out in PSOs and the rules differ according to the sentence the child or young person is serving<sup>16</sup>. Most children and young people will become eligible for resettlement ROTLs at some stage of their sentence.

Children or young people sentenced to life imprisonment will be eligible to apply for ROTLs from YOIs only if the Governor considers them suitable for open conditions, even though no open conditions for children exist (PSI 08/2012, paragraph 5.30).

<sup>14</sup> In accordance with the YJB's policy on mobilities and PSO 6000

<sup>15</sup> This is not publically available but is known as Mobility for young people sentenced under section 90/91 of the PCC(S)A 2000 and section 226/228 of the Criminal Justice Act 2003 (YJB, 2008).

<sup>16</sup> See PSO 6300 for ROTLs generally.

[http://www.justice.gov.uk/downloads/offenders/psipso/PSO\\_6300\\_ROTL.doc](http://www.justice.gov.uk/downloads/offenders/psipso/PSO_6300_ROTL.doc) See chapter 11 for ROTLs for lifers. [http://pso.hmprisonservice.gov.uk/pso4700/pso\\_4700\\_lifer\\_manual\\_ch\\_11\\_jul\\_06.doc](http://pso.hmprisonservice.gov.uk/pso4700/pso_4700_lifer_manual_ch_11_jul_06.doc)

See also PSI 21/2012)

All young people in YOIs can be released on an escorted absence: this is where the young person is accompanied by a prison officer. The legal power to temporarily release any young person is found in rule 5 of the Young Offender Institution (YOI) Rules 2000.<sup>17</sup>

For adults serving indeterminate sentences this power is circumscribed by chapter 4 of PSO 4700 Serving the indeterminate sentence as amended by PSI 36/2010, which provides that a lifer will have to wait for ten years before applying for an escorted absence. However, the PSI is clear that this rule does not apply to young people held in the YJB estate. Instead it refers to YJB policy on this on escorted absences.<sup>18</sup>

Children and young people who are foreign nationals may also be eligible for ROTL.<sup>19</sup>

### Explaining the accommodation options

Steps 4, 5 and 6 set out the three legal alternatives for accommodation for a child or young person. These have been summarised briefly below.

In this section, the options have been broken down to assist practitioners in explaining the three options to a child or young person. Each option is explored in depth in the next three sections.

The options open to the child/young person will depend on their age, as well as their history, circumstances and, importantly, their own views.

	Accommodation options for children and young people		
	1	2	3
	Family or friends	Social services under Children Act 1989	Housing authority <sup>20</sup>
Under 16 years	✓	✓	x
16/17 years	✓	✓	✓
18 years or over	✓	✓	✓

### Explaining the friends and family option (step 4)

The first option for a child to think about is whether he can go home. That means thinking about whether he can live with the person or people he used to live with, whether that was parents, other relatives or friends?

To answer this question properly, think about:

When was the last time the child lived with his parents or relatives? What was it like? Would he like to go back there? Does he think they would be happy to have him back? Is there enough room for him there? Would he have his own bedroom? If not, who would he share with? Is there enough support for him there to help him? Is there a risk things could break down suddenly, leaving him in the lurch? How would living there affect his relationship with his family and friends?

If he has doubts about whether it will work, does he think it would make any difference if social services provided his family/friends with extra support?

<sup>17</sup> For further details see <http://origin-www.legislation.gov.uk/ukxi/2000/3371/contents/made>

<sup>18</sup> As of June 2012, this had not been finalised or published.

<sup>19</sup> PSI 65/2011 paragraph 2.14

<sup>20</sup> Depending on their immigration status, children and young people of any age who are foreign nationals may not be eligible for accommodation and support by the Housing Authority; however, they may be able to seek support from the National Asylum Support Service or from social services under the Children Act 1989 and other provisions.

If he goes home to family or friends, that arrangement may not have any legal status unless the arrangement is made by social services. That means he will not be in care or accommodated by the local authority in any way. This means he would not be building up care leavers' rights which are designed to help young people move towards independent living and adulthood with support from social services.

If he does go for the friends and family option, he may still be able to get extra support from children's services to meet his needs. But before he goes for this option, he should think about whether or not he is entitled to accommodation and support from social services.

### **Explaining the accommodation by social services under the Children Act 1989 option (step 5)**

Accommodation under the Children Act 1989 will usually mean a high level of support and the possibility of ongoing support through transition to adulthood in the form of leaving care rights.

If the child is under 16 and cannot go home he must be accommodated by social services. There is no other way to sort out accommodation for a child under the age of 16 under English and Welsh law. If the child's parents' agree then he can become a 'looked after child'; if they do not agree, social services may have to start care proceedings in Court.

If the child is 16 or over, then he has to agree to being looked after. If he does not agree, and social services think he really needs it, then they can bring care proceedings in Court but this is unusual.

Being in care sounds like a big step and some children are put off by the sound of it. But there are lots of positives.

First, being in care does not have to mean being put in a children's home or foster care. It does not even have to mean being separated from your family. Where appropriate, whole families can be accommodated together under section 17 of the Children Act 1989, or children can be accommodated with family members, including their parents.<sup>21</sup> This may happen where they need extra support from the local authority to develop but where the child/young person can remain at home with the local authority taking key responsibility for health and development. Although it is unusual for social services to do this, it is legally possible. If being in care at home is not an option, then accommodation provided by social services to a 'looked after' child can span a huge spread of arrangements. This can range from foster care to independent living with floating support.<sup>22</sup>

Second, being in care means that a child can expect:

- To have their needs assessed regularly.
- To have a care plan setting out exactly what support they will get, and when, and for this plan to be regularly updated.
- To have the benefit of the scrutiny of an independent reviewing officer and regular looked after child reviews.
- To have a back-up plan if things go wrong.

<sup>21</sup> This is possible under both sections 20 and 31 of the Children Act 1989. See *SA v Kent*.

<sup>22</sup> *(R (A) v Croydon London Borough Council [2008] EWCA Civ 1445)*

Third, if a child is in care for 13 weeks or more including one day on or after his 16th birthday he will be entitled to long term support as a care leaver, including help with education and setting up on his own in the future. This includes becoming a priority for housing from the housing authority and usually the benefit of a personal advisor and a leaving care grant. The local authority will have a long term duty until the child is at least 21 to provide assistance to meet his welfare needs which can be very useful.

If a child aged 16 or over cannot go home and cannot or will not go into care, the final option is to get accommodation under the Housing Act from the local housing authority.

### **Explaining the housing act route for children aged 16 or 17 (step 6)**

If the child is 16 or 17, there is the legal possibility that he or she could be housed by the housing authority.

The problems with this are that:

- This is only available if the other options are not possible.
- The accommodation under this option will often be nothing more than a roof over the child or young person's head. The quality of the accommodation is often poor.
- If the child or young person loses his or her home, he or she may become intentionally homeless and lose the right to further housing assistance in urgent situations.
- There is usually no back-up plan if this happens.
- The positives of this option are that:
  - Once accommodated under the Housing Act 1996, the child/young person may commence what can be a very long pathway to permanent social housing.

### Case study: James

James was given a 32 month sentence when he was aged 16 years old, at a time when his girlfriend had recently found she was pregnant with their first child. James's son, Dylan, was born whilst he was in custody, and whilst his girlfriend was occasionally able to visit with their son, such visits were infrequent due to the challenge of travelling with a small child, and the opportunities to form a parental bond were limited.

When James became eligible for family visits on ROTL, he was able to visit his son at home and spend days out with his new family. This not only provided James with the opportunity to bond with his son, but also benefited his family as a whole by providing them with reassurance that he would be an involved father upon his release. In turn this had a significant impact on James's outlook and he became even more determined to remain out of custody upon his release and provide a positive role model for his son, and he became much more positive about his resettlement.

In anticipation of James's release, social services were also required to provide him with suitable accommodation due to his status as a relevant child. Even though accommodation was secured in advance of his release, James still had considerable anxiety about what it would be like and how he would cope, particularly due to his unstable background. Fortunately, James was granted a mobility ROTL which allowed him to visit his accommodation prior to his release. He was able to see that it would be suitable for his needs, and this took away a considerable amount of the anxiety and uncertainty that he was experiencing, meaning that he could fully put his mind to planning his resettlement and look forward to being back in the community.

### Key legislation and guidance

- Article 8 ECHR
- Article 12 UNCRC
- Sections 17 and 20 Children Act 1989
- Housing Act 1996
- National Standards 2012, paragraphs 9.57 and 9.61
- PSO 6000
- PSI 08/2012 and 36/2010
- Youth Offender Institution Rules 2000
- Care Planning Placement and Case Review (England) Regulations 2010
- Summerfield, A. (2011) *Children and young people in custody*
- *R (A) v Croydon London Borough Council* [2008] EWCA Civ 1445
- Secretary of State's directions to the Parole Board (various)<sup>23</sup>

<sup>23</sup> <http://www.justice.gov.uk/offenders/parole-board/sos-directions>

## Step four: Family or friends accommodation arrangements

The first and most obvious release arrangement is for a child to go home or to arrange to live with a friend or relative. The law agrees with this approach and accommodation is only available under the Children Act 1989 or the Housing Act 1996 if the child cannot go home or cannot reasonably be expected to go home.

In *R (A) v Kent County Council* ([2011] EWCA Civ 1303, paragraph 9):

*The philosophy underlying the [Children] Act was to enhance and protect the integrity of the family and to strive to keep children within their family where at all possible, if necessary with the help provided by Part III [of the Children Act 1989], before resorting to the removal of children under care orders.*

However, this principle is not inconsistent with the requirement for local authorities to make provision for children. As the judge in the Kent case also went on to comment, children can be placed in care with their parents if necessary:

*When I say 'removal' I do not forget that it is perfectly possible, though not usual, to place children with their parents under the aegis of a care order.*

This point is very important as it is generally not applied by social services departments in practice who tend to talk about being in care as synonymous with being removed from the home. Children and their families may be much less resistant to the idea of being put in care if that translated to remaining with the family with extra support, including financial support, from social care.

A true private arrangement will have no legal status. It will be a private arrangement between the person that the child will live with and the person with parental responsibility (or the child themselves if he or she is 16 or 17).

Private arrangements mean that the child is not in care or being accommodated by the local authority in any way.

However, even where the child does physically go home or go to live under a private arrangement, there may be some scope for support from social services. Therefore, it is really important to go on to consider the next step (the Children Act route, step five, page 50) for the following reasons.

First, even if the child can go home or live with friends and family, they may still have unmet needs other than accommodation which could be met by social services. These needs can be met under section 17 of the Children Act 1989. Section 17 is explained fully at pages 52-54. It should involve a comprehensive assessment of any child who appears to the local authority to be in need. It should cover all their needs and consider contingency planning for when things go wrong.

Second, the placement may seem like a private arrangement because the child is living at home or with family but it may in law meet all the criteria for a looked after placement under section 20 of the Children Act 1989. Children and young people involved in the criminal justice system often end up living with friends and relatives.

In the Kent case (above), the judge found that it was very clear that the private arrangement was in fact a looked after placement. The key things to look out for are whether the local authority has been instrumental in arranging the placement and whether or not the fact that it is a private arrangement has been made explicitly clear.

If the local authority is in fact placing the child with the friends or relatives as a looked after child, the child will be entitled to everything that a looked after child is entitled to and the carers may be entitled to financial support.

# Step five: Accommodation under the Children Act section 20 and beyond

Where a child cannot live at home under a private arrangement, they may be entitled to accommodation under the Children Act 1989. This section describes the duties owed to children under the Children Act 1989.

- It sets out the questions that need to be asked to work out whether or not social services owe a duty to offer accommodation under the Children Act.
- It includes guidance on how to work out whether a child already has a care status.
- It also explains when a child with no care status can ask for help and support.
- Finally it outlines the legal requirements identified in the case of *R (G) v London Borough of Southwark* [2009] UKHL 26 for local authorities to provide accommodation and support for children who require accommodation.

## Working out if the accommodation duty is owed by social services

In order to work out whether a child is entitled to a package of accommodation and support from social services, it is necessary to ask two questions:

### 1. Does the child have an existing care status?

If so, the accommodation duty is owed. Looked after children and children under a full care order are already accommodated by the local authority. Care leavers (apart from qualifying children) will always be owed a duty. Therefore it is essential to work out if the child has or should have an existing care status. Everything you need to know to work this out is set out in this section.

If a child does not have an existing care status, it is necessary to go on to ask the second question.

### 2. Is the child a 'child in need' under section 17 of the Children Act 1989?

Former looked after children who are not care leavers and children with no care status at all may struggle to get the local authority to provide accommodation, especially once they are aged 16 or over. One of the most common scenarios for children and young people involved with the care system who enter the criminal justice system is that they have no formal on-going contact with children's social care. This is especially true of former looked after children in detention who often report that their case is 'closed' once they are sentenced. However, as Mr Justice Munby found in the Children Act case, most children in custody are 'in need'. This means that they are likely to be entitled to services as a child in need and, if they require accommodation, to be entitled to it as a looked after child.

This section explains the process of engaging the local authority to consider whether or not it has a duty to accommodate a child in the criminal justice system and sets out the legal

framework underpinning that decision, including explaining what it means to be a child in need or a looked after child.

### **The key duties owed under the Children Act 1989**

There are four main ways in which children and young people can receive support from children's services:

- Children in need (section 17)
- Children accommodated with consent (section 20)
- Children accommodated following care proceedings (section 31)
- Care leavers (section 23)

In order to see whether or not a child involved in the criminal justice system is entitled to accommodation and support from social services, it will be necessary to first work out whether or not the child has an existing care status as either a looked after child or a care leaver. If the young person is a care leaver (other than a qualifying child), then there will be an enhanced duty to provide accommodation. If the child does not have an existing care status, they may still be a child in need under section 17.

This section sets out the different duties owed under these three broad categories.

### **Children in need**

#### *What is a child in need?*

Section 17 of the Children Act 1989 imposes on local authorities a general duty to safeguard and promote the welfare of children in need in their area.

Under section 17(10) of the Children Act 1989, a child is in need if:

- (a) they are unlikely to achieve or maintain, or 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 Part III of the Act, or
- (b) their health or development is likely to be significantly impaired or further impaired, without the provision of such services, or
- (c) they are disabled.

Whether a child is in their area is sometimes queried by local authorities, especially when the child is in custody or has been moving across different local authorities.

The case of *R (K) v Manchester City Council* ([2006] EWHC 3164 (Admin)) confirmed that where a child is in custody, the assessment must consider the child's 'imminent changes in those circumstances' (paragraph 39).

Further, the House of Lords confirmed in *R (G) v London Borough of Southwark* [2009] UKHL 26 that the correct approach is for one local authority to provide the assistance and to argue it out with any other authorities in due course:

*[i]t was an important innovation in the forerunner provision in the Children Act 1948. Local authorities have to look after the children in their area irrespective of where they are habitually resident. They may then pass a child on to the area where he is ordinarily resident under section 20(2) or recoup the cost of providing for him under section 29(7). But there should be no more passing the child from pillar to post while the authorities argue about where he comes from [paragraph 28].*

Health or development can apply to mental health or development so for example if a child is suffering neglect or abuse, they are likely to be a child in need. Another example would be a disabled child who was not having his or her needs met or receiving services.

The threshold for meeting section 17 is low: a child does not need to be in 'dire straits' to be eligible for help under this section but to simply be 'likely' to suffer in some way in terms of his or her standard of living, health or development if help is not provided by the local authority.

This is confirmed by the Southwark guidance where it is confirmed at paragraph 2.24 that:

*[w]here a young person is excluded from home, is sofa surfing among friends, or is sleeping in a car, it is extremely likely that they will be a child in need (R(K) v Manchester City Council ([2006] EWHC 3164 (Admin))*

#### *What if social services refuse to assess a child?*

Refusal to assess a child may be unlawful. This was confirmed by the House of Lords in the case of *R (G) v Barnet LBC* [2004] 2 AC 208 at paragraph 32:

*The first step towards safeguarding and promoting the welfare of a child in need by providing services for him and his family is to identify the child's need for those services. It is implicit in section 17(1) that a local authority will take reasonable steps to assess, for the purposes of the Act, the needs of any child in its area who appears to be in need. Failure to carry out this duty may attract a mandatory order in an appropriate case, as occurred in R (on the application of AB and SB) v Nottinghamshire County Council [2001] EWHC Admin 235 (2001) 4 CCLR 295.*

The judge in that case makes it clear that in order for social services to carry out its section 17 duties under the Children Act, it is necessary for them to do a section 17 assessment. If a local authority refuses to do this, the child or young person is entitled to challenge that by judicially reviewing the local authority and this could result in the High Court issuing an Order for it to be done.

It is not sufficient for social services to conduct a Common Assessment Framework (CAF) Assessment as a referral for services. Filling in a CAF form is a more basic tool to assist social workers in assessing children/young people for community care services and sharing this information with other services. It should never be used as a substitute for a section 17 assessment. This is confirmed in the Working Together to Safeguard Children (2010) guidance which states at 5.17 that a CAF may be used to support a section 17 referral but is not a prerequisite.

### **Duties to help and accommodate children in need**

Local authorities have a general duty to 'safeguard and promote the welfare of children within their area who are in need' by 'providing a range and level of services appropriate to those children's needs' (section 17(1) of the Children Act 1989).

The Children Act is very clear that a range of services can include almost anything from accommodation and giving assistance in kind, to providing the young person with cash (section 17(6) of the Children Act 1989).

In providing services to children in need, the local authority is required to take into account the child's wishes and feelings (section 17 (4A) of the Children Act 1989).

While there is a power to accommodate a child under section 17, case law has made it very clear that where a child requires accommodation, this should be done under section 20 of the Children Act 1989. In fact, where a child is both a child in need and requires accommodation, the courts have held that there is a duty to accommodate the child. The House of Lords judgment in *R (G) v London Borough of Southwark* [2009] UKHL 26 states that homeless 16 and 17 year olds must be offered social care services under section 20 of the Children Act 1989, and not simply told to report to the housing department.

In April 2010 statutory guidance was issued in response to the Southwark case called Provision of Accommodation for 16 and 17 year old children who may be homeless and/ or require accommodation.<sup>24</sup>

The first stage in triggering this process will be to make a child in need referral. This section may also be used to accommodate a whole family in line with the general duty in the Children Act 1989 to keep families together where possible.

### **Children accommodated following court proceedings: Care order**

Section 31 of the Children Act 1989 empowers a local authority to take a child into its care and obtain full (full care order) or shared (supervision order) parental responsibility of that child, by consent of the family court, if that child is suffering or is likely to suffer significant harm.

Children under a care order will remain under the order regardless of where they are placed or whether they are sentenced or remanded until they are 18 years of age. If the child is under a full care order it is the responsibility of the home local authority to make adequate arrangements for his or her accommodation and support on release from custody or in order to prevent unnecessary detention.

A child is usually aware of whether or not he or she is under a full care order. All children under full care orders are also looked after. Although the care order automatically expires when the child reaches 18 (unless discharged earlier by the court), a young person will automatically be entitled to leaving care rights until they are at least 21 years old.

### **Children accommodated with consent: Looked after children**

Looked after children are children who are accommodated under sections 20 and 21 of the Children Act 1989.

Under section 20(1) of the Children Act 1989, local authorities must provide accommodation for a child in need who requires it as a result of:

- (a) there being no person who has parental responsibility for him; or
- (b) his being lost or having been abandoned; or
- (c) the person who has been caring for him is prevented (whether or not permanently, and for whatever reason) from providing him with suitable accommodation or care.

The nature of section 20 has been reviewed by the courts in several recent cases. There is now a clear body of case law to confirm that section 20 confers a duty and

<sup>24</sup> This guidance is available at <http://www.communities.gov.uk/documents/housing/pdf/jointworkinghomelessness>

<sup>25</sup> See, for example, *R (A) v London Borough of Croydon*; *R (M) v London Borough of Lambeth*, [2008] EWCA Civ 1445 (18 December 2008) at paragraphs 37,38, 40 and 41.

not a discretion to accommodate a child who meets the criteria.<sup>25</sup> A key question as to whether or not a child over 16 meets the criteria is whether or not the child requires 'accommodation' or simply 'help with accommodation'. The courts have recognised that a common sense approach needs to be taken in answering this question, without regard to financial considerations. In the case of *R (G) v Southwark* the court said:

*The decision, whether a child requires accommodation or only help with accommodation, is to be a free-standing decision based on the needs of the child without regard to the financial consequences of the decision.*

A child who meets the section 20 criteria should become 'section 20 accommodated' and will, as a result of this label, become 'looked after'.

Section 22(3) of the Children Act 1989 imposes a specific duty on a local authority looking after a child to safeguard and promote his or her welfare. In his dissenting judgment in the case of *R (G) v Southwark* (paragraph 42), Lord Rix described the role of the local authority to a looked after child as a 'quasi parent' role (paragraph 42). Section 22(3) provides that it is the duty of a local authority looking after any child:

- (a) to safeguard and promote his welfare, and
- (b) to make such use of services available for children cared for by their own parents as appears to the authority reasonable in his case.

In addition, all the Care Planning Regulations 2010 requirements outlined above apply and the child will benefit from looked after child reviews and the scrutiny of an independent reviewing officer.

Children can also become looked after following a decision by a criminal court to remand them to the care of the local authority, either on a secure or non-secure order. All children currently remanded to STCs and SCHs have looked after status. In future, section 104 LASPOA 2012 will mean that all children and young people aged under 18 remanded to custody will have looked after status.

It is also important to remember that children who are seeking asylum are likely to have been accommodated under the Children Act 1989 as they may be excluded from emergency accommodation under the Housing Act 1996.

### **Care leavers**

The legal criteria for defining a care leaver is based upon the amount of time a young person has spent in care as a child and when that time occurred. Finding out whether a young person is a care leaver requires a detailed understanding of their past. This is made more complex by the existence of the different routes by which children enter the care system.

Despite the difficulties, it is essential to establish the correct legal status as this determines the type of service to which the child or young person is entitled. Some foreign national children and young people will have been unaccompanied asylum seekers (or with another status) and likely to have been in the care of a local authority social services department prior to going into prison. These children or young people will have leaving care rights on an equal basis with British children/young people. Children and young people may find themselves in care through three distinct routes. Sometimes local authorities' departments and other agencies overlook periods of care, especially those when placed in care through the criminal justice route. The main three routes into care are as follows:

1. The 'welfare route'

This is where a child or young person has spent the appropriate period of time in care under a care order (section 31 Children Act 1989) or voluntarily accommodated (section 20 Children Act 1989)

2. The 'criminal justice route'

This is where a child or young person has either become looked after by being bailed to reside with the local authority, remanded to the care of the local authority as a looked after child (either secure or non-secure)<sup>26</sup> or been in care in the community for the appropriate period of time including one day on or after his or her sixteenth birthday, or where Regulation 3 of the Leaving Care Regulations (2010) applies.

3. The 'unrecognised route'

Occasionally, usually following legal action or the threat of it, a local authority may accept that a child or young person who was legally entitled to be accommodated under the Children Act but was not actually recognised as a looked after child at the time should now be treated as a care leaver.

This is a more complex route that is likely to require legal advice.

Once it is established how long the child or young person has or may have spent in care, it is then possible to determine the legal status of the care leaver. There are four types of care leaver:

*The eligible child – community/remand only*

Eligible children are children who are still in care (with the local authority responsible for their accommodation) aged 16 or 17 and have been in care for at least 13 weeks (Section 19B of Schedule 2 of the Children Act 1989 and regulations 40–44 of the Care Planning, Placement and Case Review (England) Regulations 2010 (S.I. 2010/959)).

A child is 'eligible' if:

- he or she is aged 16 or 17 and
- has been looked after by a local authority for a period of 13 weeks or more, and
- the period began after the child reached 14 years of age and
- ended after reaching the age of 16.

The 13 week period does not need to be continuous. However, a series of pre-planned short-term placements at the end of which the child returns to the care of a parent or a person who has responsibility for him or her will not count if the placements do not span too long a period.

<sup>26</sup> Under s.23 of the Children and Young Persons Act, 1969; when implemented s.104 LASPOA 2012

For the exclusion to count each placement must be intended to be under 17 days and they must not amount to over 75 days in any 12 month period (Regulations 40(2) and 48(2)(c) of the Care Planning, Placement and Case Review (England) Regulations 2010).

Eligible children are still looked after, but as they will become care leavers, they can access a host of services that care leavers are entitled to while receiving all the rights of a looked after child. This is to prepare the child/young person for coping without the looked after services.

The services they may access include a plan setting out how the child's needs will be met (a pathway plan) and the allocation of a personal advisor, who is independent of the local authority, to assist the child. In addition, the Care Planning Regulations 2010 requirements outlined above apply.

Pathway assessments and plans are at the heart of the system for care leavers.

The Care Planning, Placement and Case Review (England) Regulations 2010 provide detailed guidance on exactly what the assessment of need for an eligible child should cover (see Regulation 42(2)). The assessment must be produced within three months of the child turning 16 years of age (Regulation 42(1)). The assessment will form the basis of a pathway plan which must be completed as soon as possible after the assessment is done.

Volume 3 Children Act 1989 Guidance and Regulations: Planning Transition to Adulthood for Care Leavers provides:

*3.5 The 1989 Act requires that a pathway plan must be prepared for all eligible children and continued for all relevant and former relevant children. Each young person's pathway plan will be based on and include their care plan and will set out the actions that must be taken by the responsible authority, the young person, their parents, their carers and the full range of agencies, so that each young person is provided with the services they need to enable them to achieve their aspirations and make a successful transition to adulthood. This plan must remain a "live document", setting out the different services and how they will be provided to respond to the full range of the young person's needs.*

The Pathway Plan sets out the needs of the child, who is responsible for meeting those needs and a time by which they should be met. In the case of *R (J) v Caerphilly County Borough Council* [2005] 2 FLR 860, at paragraph 46 Mr Justice Munby emphasised the importance of a Pathway Plan being meaningful:

*A care plan is – or ought to be – a detailed operational plan. Just how detailed will depend upon the circumstances of the particular case. Sometimes a very high level of detail will be essential. But whatever the level of detail which the individual case may call for, any care plan worth its name ought to set out the operational objectives with sufficient detail – including detail of the "how, who, what and when" – to enable the care plan itself to be used as a means of checking whether or not those objectives are being met. Nothing less is called for in a pathway plan. Indeed, the Regulations, as we have seen, mandate a high level of detail.*

The Plan should be drawn up in consultation with the child by social services. Recent case law has confirmed that pathway plans must not be drawn up by personal advisors (see *R (A) v London Borough of Lambeth* [2010] EWHC Admin 1652).

It should be regularly reviewed and, in addition, a personal adviser should be appointed to advise and support the child and liaise with the local authority.

The specific matters that must be dealt with in the pathway plan varies according to whether the child is 'eligible' or relevant/former relevant. For eligible children, the pathway plan must deal with the matters set out in the Care Planning, Placement and Case Review (England) Regulations 2010 (Regulation 43 and Schedule 8).

This includes:

- 1) The name of the personal adviser.
- 2) The nature and level of contact and personal support to be provided, and by whom.
- 3) Details of the accommodation to be occupied when the child ceases to be looked after.
- 4) The plan for the child's continuing education or training when they cease to be looked after.
- 5) How the responsible authority will assist the child in obtaining employment or other purposeful activity or occupation.
- 6) The support to be provided to enable the child to develop and sustain appropriate family and social relationships.
- 7) A programme to develop the practical and other skills the child needs to live independently.
- 8) The financial support to be provided to enable the child to meet accommodation and maintenance costs.
- 9) The child's health care needs, including any physical, emotional or mental health needs and how they are to be met when the child ceases to be looked after.
- 10) The responsible authority's contingency plans for action to be taken in the event that the pathway plan ceases to be effective for any reason.

### *The relevant child*

Relevant children are those who are no longer in care and accommodated by the local authority but who are entitled to the leaving care services (under Section 23A of the Children Act 1989).

A child is 'relevant' if:

- he or she is aged 16 or 17 and
- is not currently being looked after by a local authority,
- but was, before last ceasing to be looked after, an eligible child.

Many children in custody should be able to benefit from Regulation 3 of the Leaving Care Regulations 2010 which provides for an additional category of 'relevant children' who are:

- aged 16 or 17
- not subject to a care order, and

- on attaining the age of 16 the child was detained, or in hospital, and immediately before being detained or admitted to hospital had been looked after by a local authority for a period or periods amounting in total to at least 13 weeks, which began after the child attained the age of 14.

Sometimes children will meet the criteria for this due to being remanded into local authority care.

Regulation 3(5) and (6) of the Care Leavers (England) Regulations 2010 confirms that a child who has returned home for a continuous period of six months will not be a 'relevant child'. However, if the placement breaks down subsequently the child may become 'relevant again (there is nothing in the legislation that suggests a child who is detained will cease to be 'relevant').

If a child is 'relevant', under section 23 B of the Children Act 1989, the local authority must:

- take reasonable steps to keep in touch
- appoint a personal adviser
- carry out an assessment of needs
- prepare a Pathway Plan
- safeguard and promote the child's welfare and
- provide support by maintaining, or providing or maintaining, him or her in suitable accommodation, unless satisfied that his or her welfare does not require it.

This last duty is particularly relevant to children leaving custody, as they will frequently require the provision of accommodation to ensure their welfare (including sometimes their liberty) is safeguarded. Paragraph 3.3 of *Volume 3 Children Act 1989 Guidance and Regulations: Planning Transition to Adulthood for Care Leavers* specifically warns that services to children should not cease just because they are detained.<sup>27</sup>

*The responsibilities of local authorities to prepare pathway plans and support care leavers as they make the transition to adulthood apply irrespective of any other services being provided for them, for example, because they are disabled, in custody, or because they are being looked after as they entered the country as an unaccompanied asylum seeking child (UASC).*

While, by definition, a relevant child is not accommodated by the local authority, there are very detailed requirements to make sure that a relevant child is provided with suitable accommodation.

Regulation 9(2) and (3) of the Care Leavers (England) Regulations 2010 clearly sets out the requirement to ensure that accommodation is suitable. It establishes that "suitable accommodation" means accommodation:

- (a) which so far as reasonably practicable is suitable for the relevant child in the light of their needs, including any health needs and any needs arising from any disability,
- (b) in respect of which the responsible authority have satisfied themselves as to the character and suitability of the landlord or other provider, and
- (c) in respect of which the responsible authority have, so far as reasonably practicable, taken into account the relevant child's—

<sup>27</sup> This guidance is available at <http://www.communities.gov.uk/documents/housing/pdf/jointworkinghomelessness>. See, for example, *R(A) v London Borough of Croydon*; *R(M) v London Borough of Lambeth*, [2008] EWCA Civ 1445 (18 December 2008) at paragraphs 37,38, 40 and 41.

- (i) wishes and feelings, and
- (ii) education, training or employment needs.

In deciding whether accommodation is suitable for a relevant child, the responsible authority must have regard to the following matters which are set out in Schedule 2 of the Regulations:

- 1) In respect of the accommodation, the—
  - (a) facilities and services provided,
  - (b) state of repair,
  - (c) safety,
  - (d) location,
  - (e) support,
  - (f) tenancy status, and
  - (g) the financial commitments involved for the relevant child and their affordability.
- 2) In respect of the relevant child, their—
  - (a) views about the accommodation,
  - (b) understanding of their rights and responsibilities in relation to the accommodation, and
  - (c) understanding of funding arrangements.

A pathway plan for a relevant child must deal with all the issues outlined in the Care Leavers (England) Regulations 2010 (Regulation 6 and Schedule 1). This includes:

- 1) The nature and level of contact and personal support to be provided, and by whom, to the child or young person.
- 2) A detailed plan for the education or training of the child or young person.
- 3) How the responsible authority will assist the child or young person in relation to employment or other purposeful activity or occupation.
- 4) Contingency plans for action to be taken by the responsible authority should the pathway plan for any reason cease to be effective.
- 5) Details of the accommodation the child or young person is to occupy (including an assessment of its suitability in the light of the child's or young person's needs, and details of the considerations taken into account in assessing that suitability).
- 6) The support to be provided to enable the child or young person to develop and sustain appropriate family and social relationships.
- 7) A programme to develop the practical and other skills necessary for the child or young person to live independently.

- 9) The financial support to be provided to the child or young person, in particular where it is to be provided to meet accommodation and maintenance needs.
- 10) The health needs, including any mental health needs, of the child or young person, and how they are to be met.

An unlawful pathway plan that does not adequately deal with these issues can be challenged.

### *The former relevant child*

Former relevant children are young people aged 18 to 21 who have been either eligible children or relevant children (under section 23C of the Children Act 1989). A young person under 25 who is still receiving support from a local authority with education or training will be a former relevant child until the end of their programme of study (under section 23CA of the Children Act 1989).

The local authority must take reasonable steps to:

- keep in touch
- continue the appointment of a personal adviser and
- keep the Pathway Plan under regular review, and
- give a child assistance to the extent that their welfare and educational or training needs require it.

Although the requirements towards a former relevant child do not extend to an absolute duty to provide the young person with accommodation, in certain circumstances, the local authority may be required to provide accommodation if this is what the young person's welfare requires. In the case of *R (SO) v London Borough of Barking and Dagenham [2010] EWCA Civ 1101* the Court of Appeal considered whether a former relevant child can be accommodated under section 23C(4)(c). That section provides:

*It is the duty of the local authority to give a former relevant child: (c) other assistance, to the extent that his welfare requires it.*

### *The qualifying child*

In the case of a former relevant child, section 23C (3) requires the local authority to continue with the appointment of a personal advisor and to continue revising and reviewing the pathway plan, which should continue to deal with the issues covered in pathway plans for relevant children (see above).

Children and young people aged between 16 and 21 who are not looked after or do not have full leaving care rights, may fall under the category of children who qualify for advice and assistance (under section 24 of the Children Act 1989). Generally these children/young people have been in care at some stage after their sixteenth birthday but not usually for the full 13 weeks. In addition, children who have been under a guardianship order or who have been in hospital, placements arranged by voluntary organisations and in private fostering arrangements for a period of three months or more may also fall into this category.

The critical thing to look out for is whether or not a child or young person has been in a placement away from home after the age of 16.

The local authority is required to maintain contact with these children or young people and provide them with advice and assistance.

#### *Visiting duties for former looked after children in custody*

Children under 18 who are not looked after or relevant children in custody must be visited by a representative of the local authority (section 23ZA of the Children Act 1989).<sup>28</sup> The local authority must also arrange for appropriate advice, support and assistance to be made available to those children.

The whole point of the visiting duties is to ensure that former looked after children are not forgotten about and that the local authority remains in touch.

If the child needs to become looked after again, the local authority will be in a good position to spot this. However, if the local authority fails to spot this and the child is both in need and requires accommodation, a further referral for a fresh child in need assessment under section 17 of the Children Act 1989 can be made.

#### **Key legislation and guidance**

- Sections 17, 20, 21, 23, 24 and 31 of the Children Act 1989
- Department for Children, Schools and Families and Department for Communities and Local Government guidance: *Joint working between Housing and Children's Services: preventing homelessness and tackling its effects on children and young people*
- Care Planning Regulations 2010
- Section 104 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012
- Regulations 40(2) and 48(2)(c) of the Care Planning, Placement and Case Review (England) Regulations 2010
- Regulation 3 of the Leaving Care Regulations

<sup>28</sup> Accompanying statutory guidance in support of this is available at <https://www.education.gov.uk/publications/eOrderingDownload/DfE-00562-2010.pdf>

# Step six: Accommodation from the Housing Authority (over 16s only)

## Summary

- This section outlines the circumstances in which children and young people over the age of 16 may be entitled to accommodation from their Housing Authority if they are not entitled to accommodation from children's services.
- It explains how emergency housing works and how this system interacts with the Children Act duties
- It sets out how young people can be assisted to apply for long term social housing
- It advises on the circumstances in which a young person requires legal assistance to resist being found intentionally homeless, ineligible or in priority need.

Where a child/young person aged 16 or over needs accommodation but is not owed a duty as a looked after child or relevant child under the Children Act or is unable to stay with family or friends, they may apply for accommodation under the Housing Act 1996 or attempt to rent privately. Children and young people may still be entitled to support from children's social services in obtaining and maintaining accommodation under the Housing Act.

## Early advice and support

Because it should now be rare for children aged 16 and 17 to obtain accommodation under the Housing Act, this section simply provides a brief overview of the legal framework and practical options. This is a complex area of law and a child or young person having difficulties in seeking accommodation under the Housing Act should always seek advice from a housing lawyer. It is also important that a child/young person understands that if accommodation is provided by a source other than children's services breaks down, it may result in the child being found to be intentionally homeless. By contrast if a looked after placement breaks down, the local authority remains under a duty to provide a contingency plan.

It may be important to identify a local housing lawyer at the outset who will be able to assist if there are problems later on. A child/young person may also require advice on benefits. It will be important to check that a young person has a national insurance number as soon as possible.<sup>29</sup>

## *Housing options*

There are three main routes for accommodation under the Housing Act or on the private market:

- emergency homelessness applications
- applications for council housing
- private renting or supported hostels (usually with housing benefit).

In reality, children and young people in the criminal justice system are most likely to be making emergency applications.

<sup>29</sup> For government guidance on how to get a NI number, see:

[http://www.direct.gov.uk/en/MoneyTaxAndBenefits/Taxes/BeginnersGuideToTax/NationalInsurance/IntroductiontoNationalInsurance/DG\\_190057](http://www.direct.gov.uk/en/MoneyTaxAndBenefits/Taxes/BeginnersGuideToTax/NationalInsurance/IntroductiontoNationalInsurance/DG_190057)

## Applications for emergency housing

Where a child/young person is likely to be homeless, an application can be made for emergency housing. This may end up with the child or young person being provided with accommodation (either in the short term or long term) or being provided with assistance to find accommodation.

### *Making the application*

An application can be made to any local authority. The process is that as soon as a housing authority has 'reason to believe' that a person may be homeless or threatened with homelessness, it has a duty to make inquiries (section 184 of the Housing Act 1996). This means that if the local authority is alerted to a child/young person's need for accommodation, the duty to make inquiries is triggered. An application can be made by someone on behalf of the child/young person (paragraph 6.6 of the Homelessness Code of Guidance for Local Authorities<sup>30</sup>):

Applications may also be made by a person acting on behalf of the applicant, for example, by a social worker or solicitor acting in a professional capacity, or by a relative or friend in circumstances where the applicant is unable to make an application themselves.

There is no special form that has to be filled in or any method that is required to make sure the local authority is aware. However, it is probably a good idea to have a written record that a young person has brought their need for accommodation to the attention of the housing authority. There is no need for a child/young person to attend the Housing Department in person to trigger the process.

### *The duty to make inquiries once an application has been made*

The duty to make inquiries is a duty on the Housing Authority to consider:

- whether or not the local authority owes the applicant a duty to provide them with accommodation; or
- advice and assistance in sourcing accommodation.

Once the duty is triggered, the local authority must make inquiries into applications made by any of these groups; they cannot just say "turn up to Homeless Persons Unit on the date of release". There is no statutory requirement for the local authority to interview the applicant to make proper inquiries. However, if the only way in which a local authority can carry out inquiries is for it to visit a child/young person in prison or interview them over the phone/video-link then the authority should do this. If a release on temporary licence, a mobility or an escorted absence can be arranged to assist with progressing a homelessness application, this may be of benefit to the young person (see page 42).

If a local authority is unable to carry out its inquiries because an interview cannot be arranged prior to release, a child/young person should seek legal advice rather than wait until release. This is because the duty to make inquiries under s184 of the Housing Act applies not only to anyone who may be homeless but also to those who are 'threatened' with homelessness. You are threatened with homelessness if it is likely you will be homeless in 28 days (section 175(4) Housing Act 1996). That means that a local authority cannot refuse to make inquiries for a detained child or young person simply on the basis that they are not homeless yet.

<sup>30</sup> Accompanying statutory guidance in support of this is available at: <http://www.communities.gov.uk/documents/housing/pdf/152056.pdf>

Working out whether a person is owed the full accommodation duty is quite a complex task (see page 47). As it is an important decision, it needs to be done carefully and proper inquiries need to be made. Inquiries may take months to complete, although the Homelessness Code of Guidance recommends they should be completed within 33 working days.

### *The duty to provide accommodation while inquiries are being made*

Under section 188 of the Housing Act 1996, while the inquiries are being made, there will be a duty to accommodate any person who the authority has reason to believe may:

- be homeless;
- eligible for assistance; and
- have a priority need.

The duty to provide interim accommodation pending inquiries is triggered by a low level of evidence. The local authority simply has to have some reason to believe a person may be homeless, eligible and in priority need. As soon as this low threshold is passed, the duty to provide interim accommodation arises immediately. The accommodation that the local authority provides while it is making its inquiries must be suitable. This means it must be suitable for the particular needs of the applicant (see *R v Brent LBC, ex p Omar* (1991) 23 HLR 446 QBD). However, the only way to challenge the suitability of interim accommodation is by way of judicial review and the Courts have traditionally been reluctant to interfere with local authority decisions concerning the suitability of temporary accommodation.

For many children and young people to whom this route applies, the accommodation provided on leaving prison will be interim accommodation under section 188 of the Housing Act 1996. However, given that most children/young people will be released with conditions, ideally this process should have been completed prior to release so that the young person can be released to long term stable accommodation if it is decided that the full duty is owed.

### *Working out if the full duty to provide accommodation is owed*

The local authority has a duty to provide accommodation if the person is:

- homeless
- eligible
- priority need and
- not intentionally homeless

In addition, if these criteria are met but the applicant has a local connection to another local authority, the child or young person may be referred to another local authority.

The local authority is required under section 184 of the Housing Act to work out whether the duty is owed in a step by step fashion. This means that the local authority must make proper inquiries and not simply jump to conclusions.

In particular, it is not permissible to decide that the applicant has no local connection before working through the main criteria. If children/young people are told that they will be found intentionally homeless at the beginning of the process, it will be important for them to get legal advice as soon as possible (see below).

Each of the criteria is addressed briefly in turn:

*Is the child or young person homeless?*

Homelessness is defined under section 175 of the Housing Act 1996 and it includes a person having no accommodation available for occupation, as well as it being unreasonable for a person to occupy available accommodation.

*Is the child or young person eligible for assistance?*

Being eligible for assistance will depend on the child or young person's immigration status. Certain people from abroad or those who are not habitually resident in the UK will not be eligible for assistance. This may include people who do not have leave to be in the UK or people for whom that leave is limited. However, it shouldn't be assumed that a young foreign national is not eligible for housing support from the local authority. The child/young person's immigration lawyer should be able to advise on this.

*Is the child or young person priority need?*

Whether or not a child or young person has a priority need is determined by the rules in the Homelessness (Priority Need for Accommodation) (England) Order 2002 and section 189 of the Housing Act 1996. To be priority need, a child or young person will fall into one of the following categories:

*i) Priority need as a 16 or 17 year old:*

Children aged 16 and 17 will be considered to have a priority need unless the child is owed a duty under section 20 of the Children Act or is a relevant child (see page 56).

*ii) Priority need as an 18 – 20 year old, having been in care between the ages of 16 – 18:*

Children/young people are priority need as a result of having been accommodated, looked after or fostered for at least one day between their 16th and 18th birthdays.

*iii) Priority need as a person who is vulnerable as a result of being detained:*

People who are considered vulnerable as a result of coming from institutional backgrounds such as prison are also a priority need.

*iv) Is the child or young person intentionally homeless?*

If a child or young person is considered to have caused their homelessness by a deliberate action or inaction, he or she may be intentionally homeless. The local authority must identify what the action or inaction is that it considers caused the young person to become intentionally homeless.

If a child or young person is considered homeless, eligible, in priority need and not intentionally homeless, then the full duty will be owed. At this stage, it is possible for a local authority to refer the child or young person to another area if it is considered that the applicant does not have a local connection to the local authority they have applied to.

### *What happens once the local authority has made its inquiries?*

Once the local authority has made its inquiries under section 184 of the Housing Act 1996, a decision should be made as to whether or not the full housing duty is owed. If they decide they do owe it, then the child/young person will be provided with accommodation.

Accommodation provided under the Housing Act 1996 must be suitable (see section 206 of the Housing Act 1996). If accommodation is not considered to be suitable, a child/young person can seek a review of the suitability of accommodation. However, it is for the local authority to decide what is suitable.

If the local authority does not believe it owes a full homelessness duty, the child or young person should be provided with its provisional view in a 'minded to' letter before making a final decision. This letter should outline the fact that the local authority is not minded to provide accommodation and the reasons for it. This may be because the child/young person is not considered to meet one or all of the criteria for the duty outlined above. The purpose of the letter is to allow a young person a chance to make representations against the provisional decision. A child/young person can get legal assistance with this. If the local authority goes on to make a finding that a child/young person is not owed the full housing duty, the duty to provide interim accommodation ends. Usually, a period of 28 days' notice is given to provide the person with a chance to find alternative accommodation. This period can be extended if necessary. At this point it may be that children's services may need to step in if the applicant is a child or a young person with a care history. This is because the young person will require accommodation.

### *The duty to prevent people becoming homeless*

Where a child/young person is not already homeless but will become homeless he or she may also be provided with assistance to prevent them from becoming homeless under section 195 of the Housing Act 1996. This can include help with sourcing private rented accommodation and the Homelessness Code of Guidance for Local Authorities (2012) makes it clear that this help should be meaningful. Paragraph 14.9 provides:

*Where the housing authority is under a duty under section 195(2) and they are unable to prevent the applicant losing his or her current accommodation, the authority will need to secure alternative suitable accommodation for the applicant. Authorities should not delay; arrangements to secure alternative accommodation should begin as soon as it becomes clear that it will not be possible to prevent the applicant from losing their current home.*

This duty bites if a child/young person is threatened with homelessness and meets the criteria for the full duty set out above.

### *The duty to provide advice and assistance in cases where the full duty is not owed*

In certain cases where a person is threatened with homelessness and eligible but found not to be priority need or to have made themselves intentionally homeless, there remains a duty to provide advice and assistance to that person in securing suitable alternative accommodation.

### *Accommodation under the Housing Act must be suitable*

Under section 206 of the Housing Act 1996 local authorities providing or securing accommodation for people must ensure that it is 'suitable'.

### *Challenging decisions by the local authority*

A decision by a local authority that a child or young person cannot receive help may be challengeable. Legal advice should be obtained as soon as possible as the law in this area is complex. A child/young person can pursue a challenge to a decision not to provide accommodation through a statutory review in the county court.

### *How does the emergency housing duty fit in with duties under the Children Act 1989?*

Where a 16 or 17 year old approaches the Housing Authority for assistance with accommodation, the local authority is required to make a referral to children's services. In addition to the legal framework, Chapter 12 of the Homelessness Code of Guidance for Local Authorities, July 2006 (Communities and Local Government, 2006) is directed specifically at 16 and 17 year olds and requires local authorities to produce a framework for joint assessment by housing and children's services authorities to facilitate the seamless discharge of duties and appropriate services.

The idea is that the joint assessment will determine whether or not services are owed to the child/young person under the Children Act 1989. It is only if the duty is not owed under the Children Act 1989 that the child will be accommodated under the Housing Act 1996.

There may be times where a child/young person aged 16 or over is considered by children's social services to be suitable for accommodation and support as a looked after child but the child/young person does not consent to being looked after. In those circumstances, unless the child/young person becomes the subject of successful care proceedings, a child/young person over the age of 16 cannot become looked after and will therefore not be owed such a duty unless she changes her mind and later consents to becoming looked after.

This has been confirmed by the House of Lords in the case of *R (G) v London Borough of Southwark* [2009] UKHL 26 where becoming looked after is described as 'a service, not a coercive intervention'. In that case Baroness Hale also notes that 'there is nothing in section 20 [of the Children Act 1989] which allows the local authority to force their services upon older and competent children who do not want them' (see paragraph 28).

The important thing is that a child/young person should be making an informed decision about whether or not to consent to being looked after. Part of that decision must include understanding the nature of being looked after (that it is voluntary); the 'huge spread' of accommodation available to a looked after child; the comprehensive nature of the package including support, on-going assessment and contingency planning as well as the risk that accommodation under any other means risks a child/young person being intentionally homeless if the arrangement breaks down. If a child/young person is found to be intentionally homeless, they will not be entitled to emergency housing although in these circumstances, it is always advisable for the child or young person to consult a lawyer.

### **Applications for council housing**

There is a great demand for council housing so most local authorities operate a waiting list and a prioritisation system, usually based on points that relate to the level of need. It is important to check the system that operates in the relevant local authority and to make sure that a child/young person has advice before rejecting an offer as this can have serious consequences.

Children will not be eligible for council housing until they are 18, although some local authorities allow 16 and 17 year olds to join the waiting list. Some local authorities require applicants to renew their applications each year. An application for social housing may be a good idea for a young person due for release from detention after the age of 18. Basic information about how to apply for long term housing from the council is available online.<sup>31</sup>

Each local authority has its own allocation criteria and it is worth reading the relevant guidance carefully to see whether there are any particular provisions that affect the young person. For instance, some local authorities prioritise people who require a move as part of the MAPPA process. The allocation criteria should be available on the web site of the relevant local authority.

### **Private renting or applications to hostels (usually with housing benefit)**

Children/young people may also be accommodated in private accommodation. This can be an expensive option and most landlords will want a deposit in advance. Keeping up with the monthly rent can be difficult as housing benefit will only cover a certain amount. There is often only limited stability and security when a person is in private rented accommodation and the child/young person may be responsible for a large number of things, depending on the terms of the tenancy. Although there is nothing in law to prevent a 16 or 17 year old entering into a tenancy with a private land lord, many land lords are reluctant to do this or unaware that it is possible. If a land lord is concerned that a child/young person will not keep up the rent, they may require another adult to guarantee the rent.<sup>32</sup> There is nothing to stop a child/young person asking social services to act as a guarantor. Some local authorities run a rent deposit or rent guarantee scheme to help children/young people to rent privately.<sup>33</sup>

Children over the age of 16 and young people may also be eligible to apply for various hostel and supported living placements. These are often run by charities and housing associations such as the YMCA, Foyer, NACRO, Depaul UK, Stonham and others. These placements will usually accept referrals from the local authority. Some will also accept applications directly from young people. They will often claim housing benefit to assist with paying for the place.

#### **Key legislation and guidance**

- Housing Act 1996
- Department of Communities and Local Government (2006) *Homelessness Code of Guidance for Local Authorities*
- *Southwark* Guidance
- See Shelter website for more information: [http://england.shelter.org.uk/get\\_advice/homelessness](http://england.shelter.org.uk/get_advice/homelessness)  
[http://england.shelter.org.uk/\\_\\_\\_data/assets/pdf\\_file/0005/23387/ShelterGuide\\_KnowYourRights.pdf](http://england.shelter.org.uk/___data/assets/pdf_file/0005/23387/ShelterGuide_KnowYourRights.pdf)

<sup>31</sup> [http://www.direct.gov.uk/en/HomeAndCommunity/Councilandhousingassociationhomes/Councilhousing/DG\\_188701](http://www.direct.gov.uk/en/HomeAndCommunity/Councilandhousingassociationhomes/Councilhousing/DG_188701) provides further guidance on this.

<sup>32</sup> For further guidance, see: [http://england.shelter.org.uk/professional\\_resources/policy\\_and\\_research/policy\\_library/policy\\_library\\_folder/tenancies\\_for\\_minors](http://england.shelter.org.uk/professional_resources/policy_and_research/policy_library/policy_library_folder/tenancies_for_minors)

<sup>33</sup> For further guidance, see: [http://england.shelter.org.uk/get\\_advice/paying\\_for\\_a\\_home/rent\\_deposit\\_and\\_bond\\_schemes](http://england.shelter.org.uk/get_advice/paying_for_a_home/rent_deposit_and_bond_schemes)

# Step seven: Making it happen – who has got to do what and when and what to do when things go wrong

## Summary

This section explains the roles of various agencies in working together to make sure children and young people in the criminal justice system have suitable accommodation and support.

It provides an overview of relevant law, policy and guidance which sets out what has to be done when, and who has to do it.

Finally this section explains the complaints mechanisms available to children and young people when things don't work out and when they should be assisted in getting legal advice and representation.

The legal framework protecting children and young people's rights to suitable accommodation and support is robust. This section is designed to help practitioners understand how to make the law work to support children/young people in need.

This section should be read in conjunction with step one which outlines the various scenarios where children/young people will need accommodation and support and broadly when action should be taken.

## Consider making a child in need referral

Where the child/young person requires accommodation or help with accommodation, and does not already have care status, the most important thing to do is to make a section 17 child in need referral to the local authority at the earliest possible stage.

Anyone, including the child, can bring a child to the attention of the local authority. There is no legal requirement to fill out any particular form or even put the request in writing; in theory if a child calls up his or her social services department and says "I need help", this would count as a referral under the Children Act 1989. However, to ensure that there is evidence of a referral, it is generally a good idea to put it in writing and to state that a particular child may be in need under section 17 of the Children Act 1989.

If you are aware of a child or young person's particular vulnerabilities, it is also a good idea to state these in the referral as well as any factors relating to urgency and the risk of loss of liberty. Where possible, also include the child/young person's views on the support package.

The referral may be dealt with more quickly if you are able to provide the details of the child/young person's last known address. Check that the referral has been received.

The local authority should make a decision within one working day as to whether or not an assessment under section 17 of the Children Act 1989 will be carried out. If the local authority refuses to assess the child/young person, this is almost certainly unlawful and the child or young person should be assisted in obtaining legal advice.

If a child/young person is at immediate risk of custody simply because they have nowhere safe and suitable to go that night, and may therefore be at risk of serious harm, the child in need referral could be accompanied by a child protection referral under section 47 of the Children Act 1989.

### **Timetable for securing accommodation and support leaving detention**

For children and young people in any form of detention, the National Standards provide a strict timetable for resettlement planning. The National Standards place a strong emphasis on resettlement. However, it may be important to check that the resettlement planning is actually taking place as and when the National Standards prescribe and that the YOT manager is aware of any problems.

Resettlement planning should commence at the initial sentence planning meeting which takes place within ten days of entry to detention (National Standards 2012, paragraphs 9.27 and 9.28 and National Standards 2009, 9.16 and 9.17).

Resettlement planning should be further considered at every planning meeting thereafter, as outlined in National Standards. It is the responsibility of the YOT worker to ensure a copy of the sentence plan, including resettlement arrangements are distributed to all relevant parties external to the establishment; this would include social services where relevant.

In particular, National Standard 9.50 (2009) and National Standard 9.38 (2012) provide that 'within one month of the initial planning meeting' there should be a further 'case discussion to discuss progress at the secure establishment with the child or young person's key worker, personal officer, healthcare/mental healthcare staff as appropriate, and the child or young person to ensure that the sentence plan is being implemented as agreed.'

Further regular reviews are required depending on the length of the sentence and the timing of these reviews is set out below (National Standards 2012, paragraph 9.38 and National Standards 2009, paragraph 9.50.).

A release preparation meeting should take place one month before the release date. As stated in National Standards, the purpose of this meeting is to identify any outstanding resettlement issues and to ensure that actions to address these are prioritised by the agencies responsible. A key task of the meeting is to consider the contents of the licence and to reflect these in the respective form, the proposed training plan form (T1:FR).

If the child/young person is a looked-after child or without suitable supported accommodation, it is the responsibility of the YOT to ensure that the local authority is aware of the release plans and, if the local authority is not in attendance at the release preparation meeting, to provide an update in relation to these accommodation arrangements at the meeting.

In all cases except for very short sentences of four months where the child/ young person only serves two months, there must be a review ten working days before release (National Standards 2012, paragraph 9).

The purpose of this meeting is to ensure that resettlement arrangements are in place and that the contents of the licence or Notice of Supervision have been finalised. The 'final

release review meeting should confirm arrangements for him or her to get back to the home area on the day of release' (National Standards 2009, paragraph 9.70 and National Standards 2012 paragraph 9.58). Standard 9.72 of the National Standards 2009 and 9.60 of the National Standards 2012 require that the YOT manager should be alerted within one working day of the final release review meeting of circumstances where effective resettlement is being precluded by the lack of service provision by other agencies.

In line with sentence management arrangements, the final release review meeting is to ensure that resettlement arrangements are in place and that the contents of the release licence or notice of supervision have been finalised. Where the release arrangements have altered since the release preparation meeting, these must be immediately reflected in the T1:FR and licence/notice of supervision.

**National Standards 2012 timetable for planning review meetings when a child or young person is leaving detention**

<b>Sentence length</b>	<b>Initial planning meeting</b>	<b>Case discussion</b>	<b>First review meetings*</b>	<b>Subsequent reviews*</b>	<b>Release preparation meeting</b>	<b>Final release review meeting</b>
<b>4 months</b>	Within 10 working days of arrival	Prior to review meeting	None	None	After 4 weeks (alongside final review)	After 4 weeks (alongside resettlement review)
<b>6 months</b>	Within 10 working days of arrival	4 weeks after initial planning meeting	None	None	1 month before release date	10 working days before release
<b>8 months</b>	Within 10 working days of arrival	4 weeks after initial planning meeting	If early release – none. If not early release then 4 weeks before release	None	1 month before release date	10 working days before release
<b>10 months</b>	Within 10 working days of arrival	4 weeks after initial planning meeting	Within 3 months of case discussion	Every 3 months following first review	1 month before release date	10 working days before release
<b>12 months</b>	Within 10 working days of arrival	4 weeks after initial planning meeting	Within 3 months of case discussion	Every 3 months following 1st review	1 month before release date	10 working days before release
<b>18 months</b>	Within 10 working days of arrival	4 weeks after initial planning meeting	Within 3 months of case discussion	Every 3 months following first review	1 month before release date	10 working days before release
<b>24 months or more</b>	Within 10 working days of arrival	4 weeks after initial planning meeting	Within 3 months of case discussion	Every 3 months following first review	1 month before release date	10 working days before release

\*Review meetings can be undertaken by video link with the exception of the final release review where this must be attended by the YOT case manager.

*Department for Education Guidance on looked after children, 2010.*<sup>34</sup>

Where a child is to be looked after by the local authority on release, the Department of Education guidance on former looked after children provides that ‘as soon as possible, and [ideally] no later than 14 days before release, the child must know’:

- who is collecting them
- where they will be living
- the reporting arrangements
- sources of support – including out of hours
- the arrangements for education or employment
- arrangements for meeting continuing health needs
- how and when they will receive financial support
- when they will be seeing their social worker
- the roles and responsibilities of the respective practitioners (Department of Education, 2010).

The guidance requires the local authority to record this plan and make copies available to the child, the supervising YOT officer, Independent Reviewing Officer (IRO), the establishment, other agencies that will be involved with supporting the child after release and the child’s family, if appropriate.

Planning Transition to Adulthood for Care Leavers: Statutory guidance at Vol 3 Children Act 1989 Guidance and Regulations.<sup>35</sup>

This guidance, issued as statutory guidance by the Department of Education must be followed. There are specific sections on relevant and former relevant children in custody who require assistance with arrangements for release.

Paragraph 6.41 confirms that pathway planning must continue where a relevant or former relevant child enters custody. It requires that the young person must be visited on a regular basis and it is good practice for the **first visit to take place within ten working days of their being placed**. The role must not be fulfilled by a YOT worker. It confirms that:

*All young people will require the responsible authority to contribute to the plan for their resettlement on release. It will be good practice wherever possible to carry out a review of the pathway plan **at least a month before release** in order to give sufficient time for pre-release planning. For a relevant child, it should be exceptional for a review not to take place.*

Paragraph 6.42 provides that ‘[p]lans should be in place so that the young person is able to move into suitable accommodation, with the right kind of support, on release from custody.’

<sup>34</sup> This is available from <https://www.education.gov.uk/publications/eOrderingDownload/DCSF-00185-2010.pdf>

<sup>35</sup> Available at <https://www.education.gov.uk/publications/eOrderingDownload/DfE-00554-2010.pdf>

Paragraph 6.43 lists the steps that should be taken on behalf of any care leaver entering custody to ensure that they can access suitable accommodation on their release. The guidance confirms that accommodation is central to planning for a young person's wider needs:

*It will only be possible to plan for care leavers' wider needs, including planning the support they'll need to divert them from further offending, if a stable base has been secured for them.*

Paragraph 6.44 states that as soon as possible, and (ideally) **no later than 14 days before release**, a care leaver must know:

- who is collecting them
- where they will be living
- the reporting arrangements
- sources of support – including out of hours
- arrangements for education or employment
- arrangements for meeting continuing health needs
- arrangements for financial support
- when they can expect to see their PA
- the roles and responsibilities of the respective leaving care and youth offending staff.

Paragraph 6.45 confirms it is essential that there is clarity about who is responsible for each element of the child/young person's plan and the arrangements for communication and enforcement. The local authority should record these arrangements as part of the pathway plan and make copies available to the young person, the supervising YOT officer, the establishment and other agencies involved with supporting the child/young person after release, including, wherever appropriate, their family.

#### *PSI for children and young people detained in YOIs*

For those detained in YOIs, PSI 08/2012 includes a number of mandatory actions concerning resettlement planning. This includes requiring Governors to have a system in place to identify all young people with a care history and encourage local authorities to 'maintain their statutory duties with contact, visits and resettlement for the young person' (PSI 08/2012, paragraph 4.35).

Paragraph 4.42 of PSI 08/2012 specifically requires Governors of YOIs to take steps to encourage 'the responsible local authority to nominate a representative to attend and support the young person in custody'. It also states that the local authority:

*[s]hould be encouraged to prepare a pathway plan that addresses any support and accommodation issues that the young person will face on release, including provision for those young people aged under 16 who will re-attain Looked After status on release. The representative should be invited to attend all relevant sentence planning meetings and enabled to conduct their statutory LAC reviews.*

Paragraph 5.24 of PSI 08/2012 notes that ‘assessment of resettlement needs is an ongoing process that must be reviewed throughout time in custody and at each formal review’. It warns that other relevant agencies and individuals, including the local authority, should be involved in these processes as and when appropriate. In order to achieve this, paragraph 5.25 requires Governors to ensure that clear agreements or working protocols are put in place with all agencies that support the resettlement of young people.

Finally, where deemed critical to the young person’s successful resettlement by the establishment and the supervising officer, Governors must ensure that a member of the establishment staff attends the first training plan review meeting of that young person after release, as arranged by that young person’s supervising officer (see paragraph 5.26).

### **When things go wrong**

For a variety of reasons, often resource based, children or young people may not have accommodation and support packages in place when they need them. The law is clear and no child should want for suitable accommodation and support, even if that has a cost implication for the local authority. Remember that the detention of children is almost always more expensive for the public purse than a community package.

### **Getting legal advice**

Children are entitled to access justice as a matter of common law; Article 12 of the UNCRC and the *Council of Europe Guidelines of the Committee of Ministers of the Council of Europe on Child Friendly Justice* (2010) also provide that children should be entitled to access justice. If a child/young person needs suitable accommodation and support and it is not being provided, they are entitled to seek the advice of a solicitor. Often children/young people require help in accessing justice and practitioners may be reluctant to assist in this regard. Children and young people who are foreign nationals will almost always need the assistance of an immigration solicitor.

Delaying getting legal advice can be very damaging and lead to the solicitor having to take emergency action at the last minute, which can be complicated, costly and avoidable. Even where a child/young person is able to find a solicitor to help, restrictions on legal aid may cause delay, so the earlier a child/young person can contact a solicitor the better. Remember that solicitors are there to avoid having to go to court.

Finding a solicitor can be difficult. The Legal Services Commission operates a list of solicitors that undertake community care and/or immigration work. The Howard League for Penal Reform also operates an access to justice service. The Howard League legal team represents clients in the criminal justice system aged 21 and under and operates a legal advice line, which is a free phone number and automatically added to prisoners’ pins. Practitioners or children and young people can access free and confidential legal advice via this helpline on Tuesdays, Wednesdays and Fridays between 9am and 5pm and on Thursdays between 9am and 7pm (0808 801 0308). Even if the Howard League legal team cannot help with the issue or enquiry, we will always try to find a solicitor who can.

## Complaints

Finally, to ensure good practice, it may be a good idea to assist children/young people in making a complaint under the Children Act 1989 where a local authority responsible for resettlement plans has not complied with its legal duty. Complaints can also be made to the Local Government Ombudsman where the local authority has failed to comply with its more general duties: this will include failures by housing authorities as well as children's services.

If the police have failed to make appropriate referrals for children in police detention a complaint can be made to the police authority or the Independent Police Complaints Commission (IPCC).

If the establishment has failed to comply with its legal duties, complaints can also be made initially to the establishment. If the complaint is not dealt with satisfactorily, a further complaint can be made.

In the case of SCHs, where it exists, a review panel within the SCH may review the complaint should the child/young person not be satisfied with the outcome, or the complaint can be reviewed by Ofsted.<sup>36</sup> In the case of STCs, the relevant YJB monitor should be contacted. In the case of YOIs an appeal can be made to the Prison and Probation Ombudsman (PPO).

Copies of complaints can also be sent to the bodies that inspect the establishment: Ofsted in the case of SCHs and STCs and Her Majesty's Inspectorate of Prisons in the case of YOIs.

### Key guidance

- UNCRC Article 12
- Children Act 1989
- National standards 2009 and 2012
- Department for Children, Schools and Families (2010) *Sufficiency: Statutory guidance on securing sufficient accommodation for looked after children.*
- Council of Europe (2010) *Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice.*
- Prison and Probation Ombudsman Terms of Reference
- Review of the Complaints System in the Secure Estate for Children and Young People (D127) (2011)

<sup>36</sup> This can be downloaded from:

<http://dera.ioe.ac.uk/2650/1/Review%20of%20the%20Complaints%20System%20in%20the%20Secure%20Estate.pdf>

# Appendix 1: Custodial sentences for children

## **Detention and training Order (DTO)**

This can be given to 12–17 year olds. The length of sentence can be between four months and two years. The first half of the sentence is spent in custody and the second half spent in the community, under the supervision of the youth offending YOT.

A child serving a DTO of eight, ten or 12 months can be released one month before the mid-point of their sentence.

A child serving a DTO of 18 to 24 months can be released one or two months before the mid-point of their sentence.

## **Section 91 (Power of Criminal Courts (Sentencing) Act 2000)**

This can only be given in the Crown Court for an offence for which an adult could receive at least 14 years in custody. The length of sentence can be up to the adult maximum for the same offence, for which certain offences may be life.

## **Section 90 (Power of Criminal Courts (Sentencing) Act 2000)**

This is the only sentence available to the courts for a person convicted of murder who was aged under 18 at the time of the offence. Children are sentenced to a minimum tariff, after which they can apply to the Parole Board for release. This means that the child can be kept in prison after the end of the minimum tariff of imprisonment if they are still considered to be a risk to the public.

## **Section 228 (Criminal Justice Act 2003)**

If a child is convicted of a certain violent or sexual offence, and the court considers there is a significant risk to members of the public of further offences, the court can impose what is termed an extended sentence for public protection (EPP). This means that the child will be subject to an extended period on licence, after release from custody.

## **Section 226 (Criminal Justice Act 2003)**

If a child is convicted of a specified serious offence, and the court believes there is a significant risk to members of the public of serious harm as a result of further offences, the court can impose what is termed an indeterminate sentence for public protection (DPP). Children are sentenced to a minimum tariff, after which they can apply to the parole board for release. This means that the child can be kept in prison after the end of the minimum tariff of imprisonment if they are still considered to be a risk to the public. This provision will be abolished when the relevant provisions of LASPOA 2012 come into force.

# Appendix 2: Glossary

## **Assessment of needs**

An assessment carried out by the children's services team in the local authority to determine whether the child's needs under section 17 of the Children Act 1989 and whether the child is a 'child in need'. Anyone, including the child, can bring a child to the attention of the local authority. There is no legal requirement to fill out any particular form or even put it in writing.

A decision should be made within one working day as to whether or not the assessment will be carried out. If the local authority refuses to even assess the child, this is almost certain to be unlawful and the child should be assisted in obtaining legal advice. See step 5, p.49.

## **Child**

Someone under the age of 18 years as defined at section 105 Children Act 1989.

## **Circular (government, probation, local authority)**

Instructions, directions and guidance of lasting importance to public bodies which normally require action to be taken by public bodies or those delegated their authority/duties/powers.

## **Community care services**

Services provided by adult social services departments.

## **DTO (Detention and Training Order)**

This is a custodial sentence that can be given to 12–17 year olds. The length of sentence can be between four months and two years. The first half of the sentence is spent in custody and the second half spent in the community, under the supervision of the youth offending team. See p.75

## **DTO early release**

A child serving a DTO of eight, ten or 12 months can be released one month before the mid-point of their sentence. A child serving a DTO of 18 to 24 months can be released one or two months before the mid-point of their sentence. See p.27

## Eligible child

Those children looked after by the local authority under s.20 of the Children Act 1989. They are 16 years or over and have been looked after for 13 weeks or more since the age of 14. See page 54.

## Emergency homeless application

Where a child/young person is likely to be homeless, an application is made for emergency housing. Chapter 12 of the Homelessness Code of Guidance for Local Authorities is directed specifically at 16 and 17 year olds and requires local authorities to produce a framework for joint assessment by housing and children's services to determine whether or not services are owed to the child/young person under the Children Act 1989. If they are not, they can be accommodated under the Housing Act 1996.

## Full care order

A child is placed under a full care order, under section 31 of the Children Act, where the local authority has brought proceedings and the order has been authorised by the family court. Where this happens, the local authority obtains parental responsibility. All children under full care orders are also looked after. Although the care order automatically expires when the child reaches 18, the young person will automatically be entitled to leaving care rights until they are at least 21 years old.

If the child is under a full care order it is the responsibility of the home local authority to make adequate arrangements for his or her accommodation and support on release from custody or in order to prevent unnecessary detention.

## HDC (Home Detention Curfew)

The early release scheme for children/young people sentenced under section 91 of the PCC(S)A 2000. If eligible, children/young people can be released up to 135 days early on an electronic tag.

## HMIP (HM Inspectorate of Prison)

An independent inspectorate that reports on conditions for and treatment of those in prison, young offender institutions and immigration detention facilities. HM Chief Inspector of Prisons is appointed by the Secretary of State for Justice from outside the Prison Service for a term of five years. The Inspectorate's work constitutes an important part of the UK's obligations under the Optional Protocol to the United Nations Convention against Torture and Inhuman and Degrading Treatment: to have in place regular independent inspection of places of custody.

## **Housing authority/department**

The section within a local authority responsible for social housing in that area.

## **IPCC (Independent Police Complaints Commission)**

A non-departmental public body responsible for overseeing the system for handling complaints made against police forces in England and Wales. It can also elect to manage or supervise the police investigation into a particular complaint and will independently investigate the most serious cases itself. The IPCC handles appeals by the public about the way their complaint was dealt with by the local force, or its outcomes. While some of the IPCC's investigators are former police officers, the commissioners themselves cannot have worked for the police by law.

## **IRO (Independent Reviewing Officer)**

These officers quality assure the care planning process for each looked after child and ensure that his/her current wishes and feelings are given full consideration. The statutory duties of the IRO are to:

- monitor the local authority's performance of their functions in relation to the child's case
- participate in any review of the child's case
- ensure that any ascertained wishes and feelings of the child concerning the case are given due consideration by the appropriate authority
- perform any other function which is prescribed in regulations.

## **Intentionally homeless**

It is up to the local authority to prove that a child/young person is intentionally homeless. It must make enquiries into the reasons the child/young person became homeless and must be satisfied that all four of the following points apply:

- the child/young person deliberately did (or did not do) something
- that caused the young person to leave the accommodation
- which otherwise the young person could have stayed in, and
- it would have been reasonable for the young person to stay there.

Examples of this would include not paying the rent, being evicted for antisocial behaviour, or deciding to leave the accommodation.

## **Judicial review**

Legal proceedings that can be taken to challenge the lawfulness of decisions made by public bodies.

## **Juvenile secure estate**

Secure accommodation commissioned by the YJB made up of SCHs, STCs and YOIs.

## **Licence period**

The period from the day of release from custody to the sentence expiry date for all sentences except Detention and Training Orders.

## **Local authority**

Better known as councils: a public body that is responsible for all the public services and facilities in a particular area, including social services and housing functions.

## **Local government ombudsman**

An independent body which investigates complaints about local authorities and certain other bodies.

## **Looked after children**

(s.20 CA 1989) Child looked after by the local authority on a voluntary basis.

## **Long term sentences**

A sentence other than a DTO that for children, can be under (see Appendix 1):

- section 91 of the PCC(S)A 2000
- section 90 of the PCC(S)A 2000
- section 228 of the CJA 2003
- section 226 of the CJA 2003.

## **MAPPA (Multi-Agency Public Protection Arrangements)**

Arrangements for the 'responsible authorities' tasked with the management of those who have committed sexual or violent offences and others who pose a serious risk of harm to the public.

## **Parole**

The early release mechanism for children/young people serving certain sentences (e.g. section 90 of the PCC(S)A 2000 and section 226 of the Criminal Justice Act 2003) and the means by which certain young people who are recalled can be re-released.

## **Parole Board**

An independent body that assesses the risk posed by certain children/young people serving certain sentences to decide if they can be released on licence or progress to open conditions.

## **Pathway plan**

A plan setting out how the child or young person's needs will be met, undertaken and met by the relevant local authority.

## **Personal advisor**

Someone allocated by the local authority, but independent of them, to assist a child/young person who is in the care system or is an eligible, relevant or former relevant child.

## **PCT (Primary Care Trust)**

A PCT is the responsible body for healthcare in your area. Primary care is the first port of call when you first have a health problem, for example, General Practitioners, walk-in centres, dentists and opticians.

## **PPO (Prison and Probation Ombudsman)**

An independent body that investigates complaints from prisoners, people on probation and immigration detainees held at immigration removal centres. It also investigates the deaths of prisoners.

## **Probation Service**

Officially called the National Probation Service for England and Wales, their purpose is to supervise and rehabilitate people convicted of crimes in order to protect the public. The National Offender Management Service (NOMS) aims to reduce reoffending through consistent and effective offender management. In practice, this means probation officers or offender supervisors will supervise people on release from custody on licence conditions and those serving community orders. The Secretary of State for Justice has the ultimately responsibility for the powers exercised by the Probation Service e.g. the power to revoke a licence and recall to prison.

## **Prison Service Instructions (PSIs) and Prison Service Orders (PSOs)**

Guidance issued by the Prison Service, addressing all aspects of governance, function and management of prisons. PSOs and PSIs provide mandatory instructions and long-term policy guidance. As of 1 August 2009 all new guidance has been issued as PSIs and PSOs are being gradually phased out.

## **Public body/authority**

Carries out functions in the public interest and is funded by public funds (the tax payer) e.g. government departments, local authorities, police and Prison Service. All public bodies must carry out their duties according to the laws made by parliament.

## **Recall**

The administrative process for returning a child, serving the licence period of a long term sentence, to custody.

## **Relevant child**

A care leaver entitled to ongoing support from the local authority until at least the age of 21. They have been 'eligible' children but are no longer looked after. See p.56.

## **Resettlement**

A term used to describe the transition from custody into the community and the support that will be in place for the person leaving custody.

## **ROTL (Release on Temporary Licence)**

A form of release from custody for a specified time and usually with a licence attached specifying the terms and conditions of release. In all cases, it will be subject to a risk assessment.

Mobilities are the equivalent of a ROTL for children based in SCHs and STCs.

## **Safeguarding**

The responsibility upon individuals and agencies to protect children from maltreatment and to promote their welfare.

## **SCH (Secure Children's Home)**

There are ten SCHs, which are all run by local authorities. The Youth Justice Board purchases places for 166 children in ten institutions. SCHs are small units and have the highest staff to child ratio in the children's secure estate, between one member of staff to two children and six staff to eight children. SCHs hold children aged 10–17.

## **STC (Secure Training Centre)**

There are four STCs which are run by private companies and the Youth Justice Board purchases places for a total of 301 children. The staff ratio in STCs ranges between two staff to five children and three staff to eight children. STCs hold boys and girls aged 12–17. There is a mother and baby unit at Rainsbrook STC with space for three girls.

## **Social housing**

An umbrella term for rental housing which may be owned and managed by the government, by not or profit organisations e.g. a housing association, or by a combination of the two. The aim of social housing is to provide affordable housing.

## **Social services**

The department within every local authority providing support and assistance to vulnerable people, including children's services and adult services.

## **Supervising officer**

The named lead YOT/YOS worker responsible for overseeing a child/young person's case whilst they are involved in the youth justice system.

## **Supported accommodation**

Accommodation with access to a team of workers to help with practical tasks and emotional support, either on the same site as the accommodation or support provided alongside the accommodation – 'floating support'.

## **Vulnerable adults**

The term used for those adults who need help and support in the day to day functioning of their lives. The help provided to people who meet the criteria comes from social services.

## **Young person**

Someone aged 18 to 21.

## **YJB (Youth Justice Board)**

A non-departmental public body that was established by the Crime and Disorder Act 1998. Board members – of which there can be between ten and 12 – are appointed by the Secretary of State for Justice and have responsibility for monitoring the youth justice system across England and Wales and for providing advice to government on its operation. The primary aim of the YJB is to prevent offending and reoffending by children and young people.

## **YOI (Young Offenders Institution)**

There are 12 prisons in England and Wales that hold children. There are eight prisons for boys and three discrete units for girls attached to female prisons. Nine YOIs are run by the Prison Service and two (Ashfield and Parc) are privately run. The Youth Justice Board purchases 2,024 places for children in prisons. Prisons hold boys aged 15–17 and girls aged 17.

Six prisons (Ashfield, Cookham Wood, Hindley, Warren Hill, Werrington and Wetherby) are dedicated children's YOIs and only hold boys aged 15–17. In the remaining prisons (Eastwood Park, Feltham, Foston Hall, New Hall and Parc) children share a site with adult prisoners.

Prisons have the lowest staff to child ratio in the children's secure estate, from just 3 to 6 staff to between 40 and 60 children on the wings.

### **YOI rules**

All YOIs are regulated to these rules which were introduced in 2000. They are the equivalent of the Prison Rules 1999 that apply to adult prisons in England and Wales.

### **Youth Offending Team/Service (YOT/YOS)**

Multi-agency teams established by the Crime and Disorder Act 1998 which became operational in local authorities across England and Wales during 2000. They are made up of personnel from health, education, police, probation and social services and have responsibility for the provision of youth justice services within their area.

# Appendix 3: References

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Care Leavers (England) Regulations 2010

- regulation 3

Children Act 1989

- s 17
- s 20
- s 22
- s 23
- s 24
- s 25
- s 31
- s 47
- schedule 2, s 7

Children Act 2004

- s 11

Crime and Disorder Act 1998

- s 37

Criminal Justice Act 1991

- s 65

Criminal Justice Act 2003

- s 35
- s 156
- s 226
- s 228
- s 235

- s 244
- s 250
- s 325
- s 326
- s 327

Criminal Justice and Courts Services Act 2000

- s 69

Criminal Justice and Immigration Act 2008

Data Protection Act 1998

Domestic Violence, Crime and Victims Act 2004

- s 35

European Convention on Human Rights

- Article 5
- Article 8

European Rules for Juvenile Offenders

Freedom of Information Act 2000

Homelessness (Priority Need for Accommodation) (England) Order 2002

Housing Act 1996

- s 175
- s 188
- s 184
- s 189
- s 195
- s 206

Legal Aid and Sentencing and Punishment of Offenders Act 2012

National Assistance Act 1948

- s 21

National Health Service and Community Care Act 1990

- s 47

Police and Criminal Evidence Act 1984 (PACE)

- section 38 (6)
- part IV, clause 37

Police and Criminal Evidence Act Code of Practice

Power of Criminal Courts (Sentencing) Act 2000

- s 90
- s 91
- s 92
- s 102(5)
- s 103

Probation Circular 4/2007 - Parole assessment reports

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Prison Service instruction 31/2003

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Prison Service instruction 07/2011

Prison Service instruction 08/2012

Prison Service instruction 21/2012

Prison Service Order 4700 - Lifer Manual

Prison Service Order 6000 - Parole Release and Recall

Prison Service Order 6300 – Release on temporary licence

Prison Service Order 6650 - Sentence Calculation

Prison Service Order 6700 – Home Detention Curfew

United Nations Convention on the Rights of the Child (UNCRC) (1990)

- Article 3
- Article 12
- Article 37
- Article 40

Young Offender Institution Rules 2000

- Rule 5

# Appendix 4: The check list for children requiring accommodation

The Southwark judgment in the House of Lords (*R (G) v London Borough of Southwark* [2009] UKHL 26, resulted in a check list<sup>37</sup> of questions designed to determine whether a child who does not already have a care status is entitled to section 20 accommodation.

The check-list below has been adapted to apply to all children with nowhere suitable to live:

- (1) Is the applicant a child?  
A child is anyone under the age of 18.
- (2) Is the child a relevant child?  
A relevant child is aged 16 or 17 and has been looked after for 13 weeks or more, after the age of 14 and including one day on or after his 16th birthday. If this does not apply, consider whether Regulation 3 of the Leaving Care Regulations 2010 applies (see page 56). It may be necessary for a child to get legal advice to answer this question.

If the child is a relevant child, the local authority must provide accommodation.

If the child is not a relevant child, go to question 3.

- (3) Is the applicant a child in need?  
This will depend on whether or not the child meets the criteria set out in section 17(10) of the Children Act (see page 48). The needs relate not just to present needs but needs on release from custody in the future.

If the child is a child in need, go to question 4.

If the child is over 16 and not 'in need', go to question 10. Remember that it will be rare for any child under 18 in need of accommodation not to be a child in need.

- (4) Is he within the local authority's area?  
Applied to the prison context, this will usually be the child's home local authority. If this is not clear, the child may approach the local authority where the establishment is based. However, local authorities should not 'pass' the child from 'pillar to post' (see page 50).
- (5) Does he appear to the local authority to require accommodation?  
There is a distinction between needing 'help with accommodation' and needing 'accommodation' (see pages 52-53). Remember that a child who is in unsuitable accommodation may still be deemed to require accommodation. This may include instances where a child is living at home but the placement is at risk of breakdown.

<sup>37</sup> The check list below has been adapted and expanded for the purpose of this guide.

- (6) Is that need the result of:
- (a) there being no person who has parental responsibility for him; or
  - (b) his being lost or having been abandoned; or
  - (c) the person who has been caring for him being prevented from providing him with suitable accommodation or care.

This should be interpreted generously: it is a low threshold. Remember that children can be accommodated as looked after children with their parents, family or friends (see page 47).

- (7) What are the child's wishes and feelings regarding the provision of accommodation for him (including whether a child over 16 consents to becoming looked after)?  
The child must be consulted. A child over 16 can only become looked after if that child agrees. The child must be provided with accurate information about what being looked after really means (see page 44).
- (8) What consideration (having regard to his age and understanding) is duly to be given to those wishes and feelings?  
The implication here is that the child's wishes and feelings should be balanced with what is considered to be in his or her best interests.
- (9) If the child is under 16, do his parents' consent to him being accommodated?
- (10) If the child is aged 16 or 17 AND is either not entitled to accommodation from social services OR does not consent to it, is he entitled to accommodation from the housing authority? This will depend on whether he appears to be homeless, eligible and a priority need (see page 63).



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ISBN 978-1-905994-54-0



9 781905 994540 >

ISBN 978-1-905994-54-0

**£10.00**

**2012**