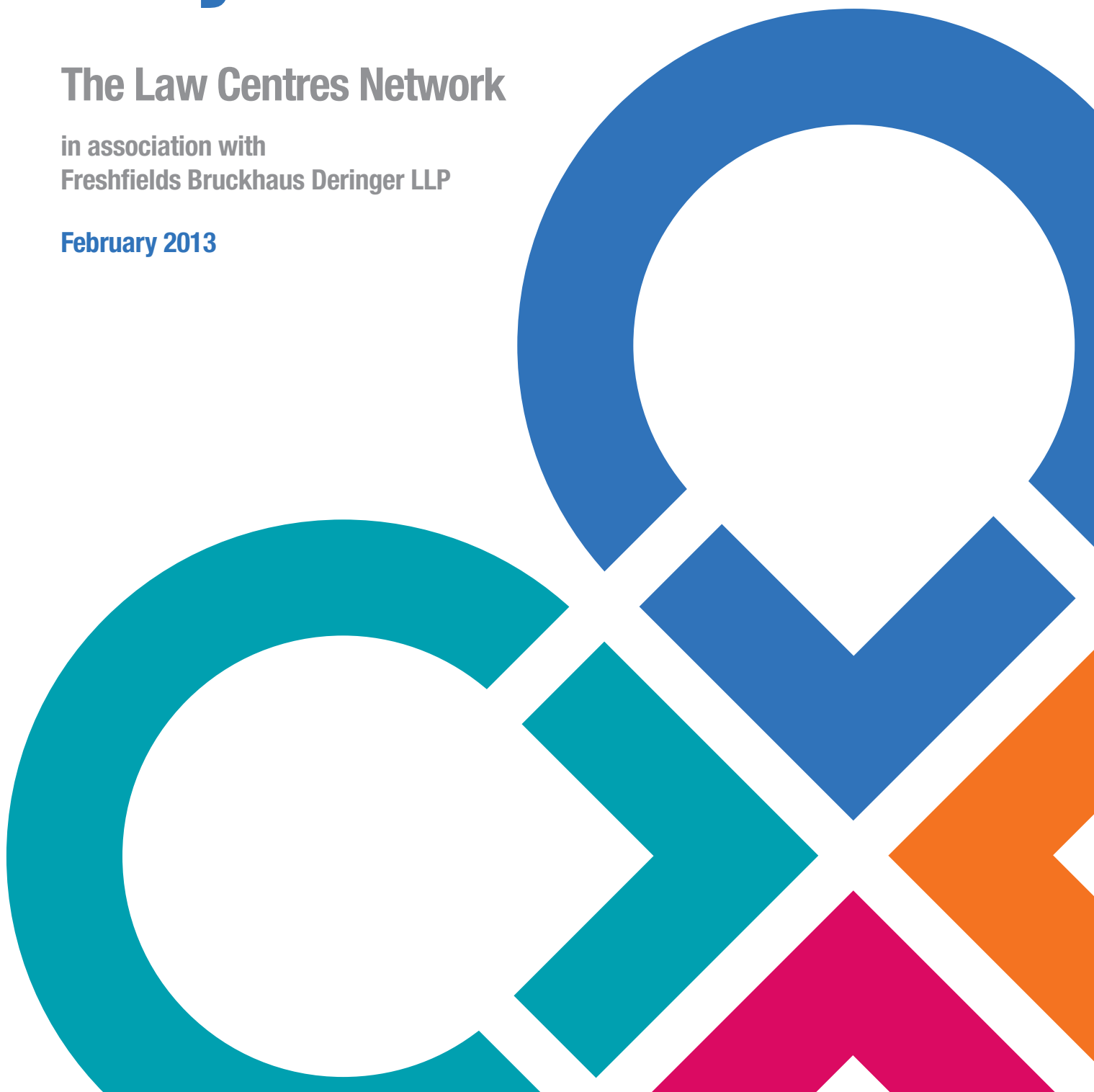


# Supporting homeless 16 and 17 year olds

The Law Centres Network

in association with  
Freshfields Bruckhaus Deringer LLP

February 2013





## The Law Centres Network

The Law Centres Network strives for a just and equal society where everyone's rights are valued and protected. We do this by supporting a national network of Law Centres that work with some of the most vulnerable and disadvantaged people in society. We are the national voice of Law Centres and their clients, representing them at all levels of government and in various national forums. We support our member Law Centres to help them achieve their full potential and be as sustainable as possible.

Law Centres offer legal advice, casework and representation to individuals and groups. Spotting local trends and issues in the course of their work, they highlight them to bring about necessary policy changes and to prevent future problems. Law Centres also help build capacity within local communities by training and supporting local groups and educating people about the law and their rights.

## The Young People's Programme

Law Centres know from experience that young people have high unmet needs for legal advice. Evidence shows that 16-24-year-olds experience at least 2.3 million rights-related problems requiring advice a year. (Youth Access).

The Young People's Programme working with Law Centres has pioneered ground-breaking legal advice services for young people which are youth focused, high quality, and transformational. As well as supporting over 3,500 disadvantaged young people each year, the Young People's Programme works strategically to bring about change for all children and young people.

Acknowledgements: We would like to thank Diane Astin, Housing Solicitor; Freshfields Bruckhaus Deringer LLP; Jenny Ross, Consultant and Karen Goodman, Senior Independent Social Worker, for their invaluable support, advice and guidance on this project.

# Introduction

**The Law Centres Network Young People's Programme, with the support of Freshfields Bruckhaus Deringer LLP, has completed a review of Local Authority protocols relating to homeless 16 and 17 year olds. 138 protocols were received from a total of 144 local authorities in England. The review looked at whether protocols were in line with the law<sup>1</sup> and statutory guidance<sup>2</sup> following the 2009 case *G v Southwark*<sup>3</sup>.**

Law Centres and Local Authorities have, in many areas, maintained long-standing and productive relationships. This project was prompted by the experience of Law Centres representing 16 and 17 year olds where a Local Authority has failed to provide them with the accommodation and support they needed. The consequences of not meeting these needs can be serious, and whilst most Local Authorities apply the rationale of using their limited resources to prioritise helping the most vulnerable, the case studies, and recent press reports of young people forced to live in tents and caves, demonstrate there are failings in the systems designed to protect vulnerable young people. The case studies show that rather than being caught by the safety net of the Local Authorities' intervention, these young people are in fact the 'lucky' ones who have been able to access legal advice and remedies to help them. There are countless more young people, in extreme situations, who cannot access advice and help from either Local Authorities or independent advice agencies. The pressures on Local Authorities are well understood, but our priority is ensuring that some of the most vulnerable 16 and 17 year olds are protected from harm.

Seventeen year old Patryk Ptasnak hanged himself in bed and breakfast accommodation in 2010. The Serious Case Review into his death highlighted the profound implications of a failure to assess a young person's needs and to provide a co-ordinated response across services. This case clearly demonstrates the tragic consequences of such failures.

The statutory guidance states "it is...essential that services for homeless 16 and 17 year olds are underpinned by written joint protocols which set out clear, practical arrangements for providing services that are centred on young people and their families and prevent young people from being passed from pillar to post" (para.5.2). The proper implementation of such "joint protocols", as required by Government and the Courts, is a way of ensuring that young people are correctly assessed and given appropriate support.

This project builds on the efforts of Shelter's Children's Legal Service who, also with the support of Freshfields, intervened in the case of *TG v Lambeth*<sup>4</sup>. As part of the intervention they requested copies of Local Authority protocols. However, they received a poor response and found that many of the protocols they did receive were not in line with the Law or Guidance.

Local Authorities do not, as a matter of course, make their protocols publicly available. Nor do they routinely provide information that is accessible to homeless young people outlining the assessment process or the support they can expect from the Local Authority. This makes it very difficult for young people, without access to independent advice, to understand the nature of the support and accommodation they should be offered and the implications of any choices they make.

The Law Centres Network recognises that the quality (and legality) of written protocols may not directly correlate with the quality (and legality) of support provided to young people. However, it is important to establish whether existing Local Authority protocols are ‘fit for purpose’. This is particularly pertinent at a time when there is likely to be an increased need for support from young people as welfare reform changes filter through, whilst at the same time Local Authority budgets are under pressure.

Local Authorities’ instinct to ‘gate-keep’ and protect resources should not prevent young people from being properly assessed and supported. Good protocols can provide clear guidance on Local Authority duties and where the use of individual discretion is appropriate.

## 16 and 17 year old homeless young people: Are they guaranteed the support they need?

V presented to a Law Centre when he was as 17. His mother had a history of mental health issues. V was in care from the age of 10 to 13, then lived briefly with his father before returning to his mother’s at the age of 15. V’s mother assaulted and threatened him with a knife and the police said it was not safe for him to return home. V approached the Local Authority for assistance and was advised that he could ‘sofa-surf’ until he went to university. The Law Centre challenged the Local Authority’s refusal to carry out a Child in Need Assessment and provide V with accommodation. As a result, V was provided with support and accommodation from Social Services.

At the age of 17 S was referred for psychiatric services when she was rescued by a passerby from attempting to throw herself off a bridge. S was the sole carer for her mother and younger siblings and had been finding it difficult to cope with her studies and responsibilities. S’s mother refused to engage with support services and S’s psychiatrist had been trying to refer her to the Local Authority for a Child in Need Assessment, without success. S’s mother told her that she could not return to the house and S was facing street homelessness. The Law Centre challenged the Local Authority’s failure to carry out a Child in Need assessment and provide accommodation under the Children Act. The Local Authority agreed to accommodation whilst an assessment was carried out. S’s mother agreed to engage with services and a rehabilitation programme to build the relationship between S and her mother was agreed. The Law Centre made sure that Social Services liaised with S’s psychiatrist while carrying out the assessment.

<sup>1</sup> Children Act 1989

<sup>2</sup> “Guidance to children’s services authorities and local housing authorities about their duties under Part 3 of the Children Act 1989 and Part 7 of the Housing Act 1996 to secure or provide accommodation for homeless 16 and 17 year old young people” issued by Department for children, schools and families and Communities and Local Government April 2010.

<sup>3</sup> R (G) v London Borough of Southwark [2009] UKHL 26

<sup>4</sup> R (TG) v London Borough of Lambeth 2011 EWCA Civ 526

# The Research Process

Request to  
**144**

Local Authorities for copy of their protocol using the Freedom of Information Act

of requests made

**138**

protocols were received

**27**

protocols/flow charts from county councils operating in a two tier authority

**31**

from unitary authorities

**48**

from London Boroughs

**32**

from Metropolitan Districts

Developed criteria for assessment of protocols

**16**

criteria established

**9**

lawyers at Freshfields receive specialist training on the review criteria and how to apply them

Roundtable meeting to share findings with key stakeholders (including Local Authorities and Department for Communities and Local Government)

Sharing of findings and development of next steps and recommendations (see page 10).

## Key Research Questions

The criteria drawn up by the Law Centres Network for assessment of Local Authority protocols focus on a number of key questions which, in Law Centres' experience, are critical to meeting young people's needs. The focus was on the requirement of the Local Authority to carry out a needs assessment, whether there was provision of suitable temporary accommodation and whether the law was being correctly applied.

We have made particular reference to the protocols of London Boroughs in this briefing. London presents a unique picture of high levels of need, overcrowding and stretched resources, with pressures on Local Authorities such that 'gatekeeping' of housing and social worker/ personal advisor resources, whilst not a deliberate attempt to deny assessment and accommodation, is often a harsh reality.

# 1

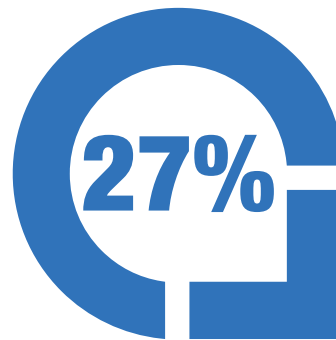
## Do protocols outline a process that ensures young people's needs are adequately assessed?

### Statutory Guidance:

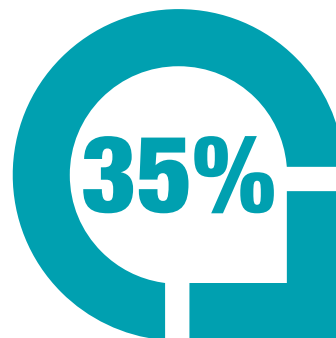
para. 2.13 "...children's services should be the lead agency with regard to assessing and meeting the needs of 16 and 17 year olds"

para. 2.28 "An Initial assessment should be carried out involving interviewing the young person and family members and making enquiries with other agencies... the lead agency will be children's services, given their responsibilities for children in need in their areas"

# Headline Results



of all protocols do not make it clear that **Social Services** should be the lead authority



of all protocols in London do not make it clear that **Social Services** should be the lead authority

A good protocol should make it clear that Social/Children's Services are the lead agency within a Local Authority for dealing with homeless 16 and 17 year olds. They are the department with experience and training to undertake Child in Need assessments and can provide or co-ordinate appropriate support based upon the assessment. The protocol should also clearly set out the referral mechanisms to Social/Children's Services if the young person presents to another Local Authority department or service (e.g. Housing Department, Youth Offending Team).

A significant number of protocols actively direct young people away from Social/Children's Services and to the Housing Department or a "Young Person's Homeless Person's Unit". There is often no reference as to how the young person's broader or non-housing needs will be assessed by these teams or the role that Social/Children's Services should play.

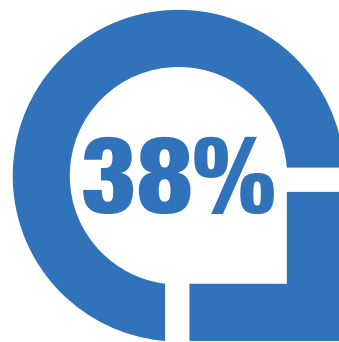
# 2

## Do the protocols outline a process that ensures that young people get the support that they are entitled to under Section 20 of the Children's Act 1989?

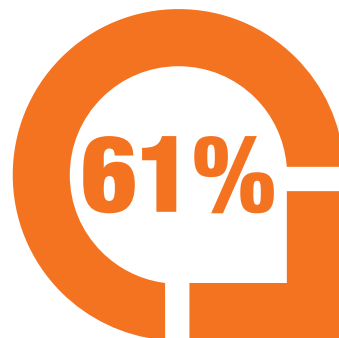
### Statutory Guidance:

para. 2.23 "There can be no doubt that where a young person requires accommodation as a result of one of the factors set out in section 20(1) (a) to (c) or section 20(3) then that young person will be in need and must be provided with accommodation. As a result of being accommodated the young person will be Looked After"

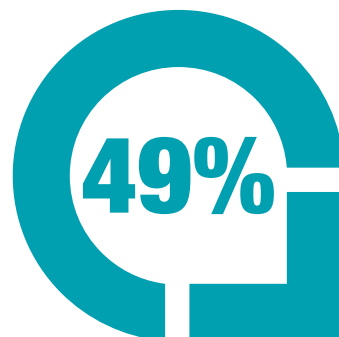
# Headline Results



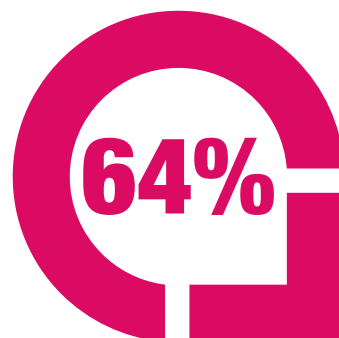
of all protocols do not set out s.20 correctly



of all protocols do not correctly apply s.20



of all protocols in London do not set out s.20 correctly



of all protocols in London do not correctly apply s.20



A good protocol should accurately set out Section 20 of the Children Act 1989 and in addition the description of how it will be applied should be in accordance with the law, as set out in the statutory guidance.

There are areas of concern in some of the protocols as currently drafted. Many protocols apply additional criteria for providing support under Section 20 over and above those set out in the Children Act 1989 or incorrectly state that the young person must themselves request a Child in Need Assessment before it is carried out.

Additionally, many protocols state that to be fully supported (under Section 20) the young person must want or agree to be 'Looked After'. The courts have made it very clear that the section 20 duty arises if the child requires accommodation for one of the reasons set out in section 20. The child will, as a matter of law, become a 'Looked After Child'. It is not necessary that the Local Authority determines that the child needs 'looking after' in the ordinary sense.

Experience shows that many 16 and 17 year olds do not want to be 'Looked After' or 'taken into care', but are still vulnerable and need the support that Section 20 status affords them. As a result they may reject an offer of 'section 20 accommodation' believing that they will be put into a care home or a foster placement.

## Section 20 Children Act 1989

Section 20 (1) : Every Local Authority shall provide accommodation for any child in need within their area who appears to them to require accommodation as a result of:

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

## Implications of being accommodated under section 20

*16 and 17 year olds, who are accommodated under Section 20, for 13 weeks or more, acquire the status of a 'Looked After Child'. This means that in addition to being provided with accommodation and financial support, whilst they are in the care of the Local Authority, they should be appointed a personal advisor, who will help decide what advice, assistance or support should be provided to them. In addition, a 'pathway plan' should be drawn up, setting out how the Local Authority proposes to meet their needs with a view to supporting the child after they turn 18. The young person can expect advice and assistance from the Local Authority until they are 21, or, if they start a program of training or education whilst under the age of 25 until that program ends. A child being accommodated by the Housing Department would not receive any of these additional forms of support.*

# 3

**Do the protocols outline a process that ensures that young people are offered appropriate interim accommodation? And do they make clear that bed and breakfast accommodation is not to be used?**

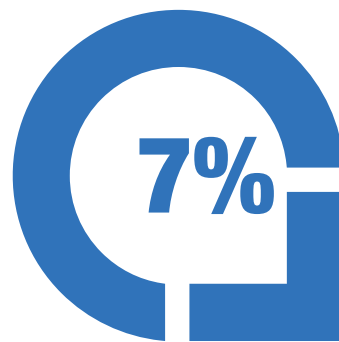
## Statutory Guidance

para. 2.16 “where a 16 or 17 year old seeks help or is referred, and it appears that he or she has nowhere safe to stay the night, then Children’s Services must secure suitable emergency accommodation for them” and additionally “this means that the young person will become Looked After (under s.20(1)) whilst their needs are assessed.

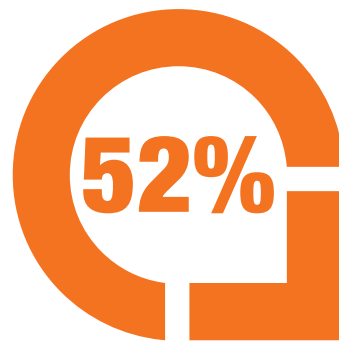
para. 2.10 “The Secretary of State considers that Bed and Breakfast accommodation is unsuitable for 16 and 17 year olds”

para. 3.1 “Bed and breakfast accommodation is not suitable for 16 and 17 year olds”

## Headline Results



**(10%) in London**  
of all Local Authorities clearly use B&B to accommodate homeless 16 and 17 year olds as a matter of course



**(63%) in London**  
of all Local Authorities make no reference to the fact that the guidance prohibits the use of B&B



**(16%) in London**  
of all Local Authorities use B&B to accommodate 16/17 year olds only in emergencies



**(10%) in London**  
of all Local Authorities prohibit the use of B&B to accommodate 16/17 year olds in any circumstances

Protocols should clearly set out the procedure for providing homeless 16 and 17 year olds with temporary accommodation, pending assessment, where required. Where a homeless young person is referred to or seeks help from Social/Children's Services they must provide suitable emergency accommodation during the assessment process. If the young person approaches the Housing Department and is eligible and homeless then the Housing Department must make an immediate referral to Social/Children's Services, and provide appropriate interim accommodation.

The use of Bed and Breakfast should be explicitly prohibited in the protocol and must not be used even in emergency situations. Bed and Breakfast accommodation is generally unregulated accommodation, with young people frequently being accommodated alongside adults. Residents are often prohibited from remaining in the accommodation during the day and there are seldom cooking facilities so many young people end up relying on expensive takeaways.

A number of protocols specifically state that the Local Authority will not accommodate homeless 16 and 17 year olds under Section 20 until the Child in Need assessment has been completed. The effect (according to the Authority) is that the necessary 13 week period of being accommodated under section 20, that must accrue in order for the young person to be entitled to support after the age of 18, does not begin immediately. Effectively, any delay in either the assessment or the provision of accommodation can lead to a young person who is nearing the age of 18 being denied the support they are entitled to as care leavers.

## Case studies

*S was a 17 year old with mental health issues. S refused to return to her parents' house for reasons she was not willing to disclose. S had made a previous abuse allegation against her father when she was 15 and had been staying for two weeks with three middle-aged men in central London. There were strong reasons to suggest that she was at risk of exploitation. Social Services refused to provide emergency accommodation for S and the Law Centre made representations about their legal duties to S. As a result she was placed in supported accommodation, began to receive psychiatric treatment and was able to make progress in her education.*

*B ran away from home when he was 16 after suffering physical and verbal abuse from his stepfather. He stayed in a local church, until the priest took him to the police station, who then took him to the Local Authority for accommodation. He was placed in bed and breakfast accommodation for several months. He had no income as there were errors with his welfare benefits claim, and he was living off handouts from the Salvation Army. During his time at the bed and breakfast he was offered drugs and narrowly escaped a sexual assault. He was then moved to another bed and breakfast where he was physically and sexually assaulted. He was later arrested following an incident, and such was his state of mind he was taken to an adolescent psychiatric unit for assessment. He was diagnosed with severe learning difficulties. On review of his case the Local Authority removed him from bed and breakfast accommodation and he was placed with foster carers.*

# Recommendations and Next Steps

**Protocols need to be improved. Our findings were that many do not adequately guarantee that the correct processes are being followed to ensure that 16 and 17 year old homeless young people are provided with the support they need and are entitled to under the law and statutory guidance.**

## Recommendations:

Local Authorities should urgently review their protocols to ensure they comply with the law and statutory guidance.

Local Authorities should make clear within their homelessness and tenancy strategies as well as their allocations policies (all of which are publicly available) how they will deal with homeless 16 and 17 year olds and ensure that they allocate adequate resources to meet the assessed needs.

## Next Steps:

The Law Centres Network will make available to Local Authorities, on request, the analysis of their protocols. Copyright restrictions prevent us making the protocols and our full analysis publicly available.

The Law Centres Network will provide a general summary of good practice to support revision of protocols. The Law Centres Network will work with other key stakeholders to produce a youth-friendly explanation of the choices that young people have in relation to section 20 status for use by practitioners and Local Authorities.

**Current processes for homeless 16 and 17 year olds lack transparency which causes confusion, increases the likelihood of litigation and wastes resources. There is a lack of joint working and communication between the out of hours and emergency social work teams and day services.**

## Recommendation:

An increased dialogue between Local Authorities and services supporting young homeless 16 and 17 year olds to ensure improved and more efficient delivery of services for young people.

Contact details for out of hours social workers are made more freely available. Ensuring that young people, and their advisors, are clear about who is taking responsibility for them and where they should present out of hours.

## Next Steps:

The Law Centres Network and other services working with young people will use this research to try to engage with Local Authorities to improve dialogue and practice.

We will explore whether pilot programmes in specific Local Authority areas can improve practice and assess the impact of responding more effectively to young people's needs.



# Contact details:

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