

# ADVOCACY CLINIC

## *Care leavers' rights*

Tuesday 8 November 2022, 11am-12:30pm on Zoom

For members of the Children and Young People's Advocates Network

# WHO ARE CARE LEAVERS?

## 1) ELIGIBLE CHILD OR YOUNG PERSON

- **16 or 17** years old currently looked after by local authority

## 2) RELEVANT CHILD OR YOUNG PERSON

- **16 or 17** years old *not* currently looked after by local authority

## 3) FORMER RELEVANT CHILD OR YOUNG PERSON

- **18-25** years old eligible or relevant child

## 4) QUALIFYING CHILD OR YOUNG PERSON

- **16-21** years old or **16-25** in full-time education (college or university), *not* currently looked after

# KEY LEGISLATIONS AND GUIDANCE

- CHILDREN ACT 1989
- CHILDREN AND SOCIAL WORK ACT 2017
- EQUALITY ACT 2010

- THE CARE LEAVERS (ENGLAND) REGULATIONS 2010
- THE CARE PLANNING, PLACEMENT AND CASE REVIEW (ENGLAND) REGULATIONS 2010
- THE SPECIAL GUARDIANSHIP REGULATIONS 2005

- THE CHILDREN ACT 1989 GUIDANCE AND REGULATIONS – VOLUME 3: PLANNING TRANSITION TO ADULTHOOD FOR CARE LEAVERS
- EXTENDING PERSONAL ADVISER SUPPORT TO ALL CARE LEAVERS TO AGE 25: STATUTORY GUIDANCE FOR LOCAL AUTHORITIES
- THE CHILDREN ACT 1989 GUIDANCE AND REGULATIONS – VOLUME 2: CARE PLANNING, PLACEMENT AND CASE REVIEW
- SPECIAL GUARDIANSHIP GUIDANCE: STATUTORY GUIDANCE FOR LOCAL AUTHORITIES ON THE SPECIAL GUARDIANSHIP REGULATIONS 2005 (AS AMENDED BY THE SPECIAL GUARDIANSHIP (AMENDMENT) REGULATIONS 2016)

# ELIGIBLE CHILD OR YOUNG PERSON

[Schedule 2, Paragraph 19B Children Act 1989](#)

- **16 or 17** years old
- Currently looked after; for 13+ weeks since age 14

# RELEVANT CHILD OR YOUNG PERSON

## Sections 23A, 23B Children Act 1989

- **16 or 17** years old
- No longer looked after; looked after for a cumulative period of 13+ weeks since age 14 and ended after 16<sup>th</sup> birthday
- Was an eligible child
- Not subject to a care order; an eligible child before being detained/ admitted to the hospital
- No longer a relevant child if “returns home” for 6+ months (no longer accommodated under section 20 or section 31 Children Act 1989)

# FORMER RELEVANT CHILD OR YOUNG PERSON

[Sections 23C, 23CZA, 23CZB, 23CA Children Act 1989](#)

- **18-25** years old
- No longer looked after; looked after for a cumulative period of 13+ weeks since age 14 and ended after 16<sup>th</sup> birthday
- Was an eligible or a relevant child

# QUALIFYING CHILD OR YOUNG PERSON

Sections 14F, 24, 24A, 24B Children Act 1989

- **16-21** years old or **16-25** in full-time education (college or university)
- No longer looked after
- Looked after immediately before a special guardianship order
- Not an eligible or relevant child (spent less than 13 weeks in care)
- Looked after, accommodated or fostered on or after 16th birthday (includes accommodation in hospital for 3+ consecutive months)

# LOCAL AUTHORITY DUTIES

## ELIGIBLE CHILD

- ✓ **Personal Adviser**
- ✓ Needs Assessment
- ✓ Pathway Plan
- ✓ Make & maintain contact
- ✓ Promote educational attainment
- ✓ Suitable accommodation and maintenance
- ✓ **Staying in put arrangement**
- ✓ Local offer
- ✓ Advocacy
- ✓ Representations & complaints
- ✓ Reasonable adjustments

## RELEVANT CHILD

- ✓ **Personal Adviser**
- ✓ Needs Assessment
- ✓ Pathway Plan
- ✓ Make & maintain contact
- ✓ Support with employment, education and training
- ✓ Suitable accommodation and maintenance
- ✓ Local offer
- ✓ Advocacy
- ✓ Representations & complaints
- ✓ Reasonable adjustments

## FORMER RELEVANT CHILD

- ✓ **Personal Adviser**
- ✓ Needs Assessment
- ✓ Pathway Plan
- ✓ Make & maintain contact
- ✓ Support with employment, education and training
- ✓ **Assistance to the extent welfare requires it**
- ✓ **Staying in put arrangement**
- ✓ Local offer
- ✓ Advocacy
- ✓ Representations & complaints
- ✓ Reasonable adjustments

## QUALIFYING CHILD

- ✓ Needs Assessment
- ✓ **Plan**
- ✓ Make & maintain contact
- ✓ Support with employment, education and training
- ✓ Suitable accommodation and maintenance **\*in exceptional circumstances**
- ✓ Local offer
- ✓ Advocacy
- ✓ Representations & complaints
- ✓ Reasonable adjustments



# CARE LEAVERS IN CUSTODY

[The Children Act 1989 guidance and regulations – Volume 3: planning transition to adulthood for care leavers; Chapter 6: Care leavers who require additional specialist support \(pages 48 to 58\)](#)

“6.44 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.”

# FURTHER RESOURCES

## INFORMATION FOR CHILDREN, YOUNG PEOPLE AND ADVOCATES

- [LEAVING CARE](#)
- [YOUR RIGHT TO COMPLAIN](#)

## RESOURCES FOR ADVOCATES

- [RIGHT TO ADVOCACY](#)
- [STATUTORY REPRESENTATIONS \(INCLUDING COMPLAINT\) PROCEDURE](#)
- [EQUALITY ACT 2010: A GUIDE FOR ADVOCATES](#)
- [LAW MAP: VISITS BY AND CONDUCT OF SOCIAL WORKERS](#)
- LAW MAP: SPECIAL GUARDIANSHIP ORDERS (coming soon!)

# CASE STUDY ANALYSIS

# CASE STUDY 1, Janine

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Janine is 18 years old and, until recently, she lived with her aunt who became her special guardian after Janine lost her mum at the age of 10. The relationship between Janine and her aunt had been deteriorating over the past couple of years and, eventually, Janine moved out.

Janine is not receiving any support from her aunt or any other family member; she feels she has been let down by everyone. She is due to relocate to Liverpool in January to start a university course and will be sofa surfing with friends until then; she is worried she is being set up to fail and will not make it past the first term of her course. Another young person has told her that she should be getting support from the local authority as a qualifying young person because of the special guardianship order.

# CASE STUDY 2, Aziz

## CASE STUDY 2, Aziz

Aziz is 18 years old. He first arrived in England when he was 14 years old as an unaccompanied child and for the first two years, he lives with a foster family. When he was 16, he was moved to 'semi-independent' (unregulated) accommodation, which the local authority justified as 'preparing him for independence'. Aziz had a very tough time while living there and, shortly before his 18th birthday, he received a custodial sentence.

Aziz is due to be released soon. He told a youth worker who visits him in prison that he is scared, upset, feels let down by everyone, and is worried he will end up on the street. The youth worker is unsure what support Aziz is entitled to, and, with Aziz's permission, he refers him to an advocacy service. Aziz told the advocate who contacted him that he dreams of studying mechanical engineering but could never afford any school fees.

# A "Former Relevant Child" (FRC)

## Stage 1: Is Aziz a FRC under the Children Act 1989?

- Section 23C(1) (a) – “Each local authority shall have the duties provided for in this section towards—(a) **a person who has been a relevant child** for the purposes of section 23A (**and would be one if he were under eighteen**), and in relation to whom they were the last responsible authority .”
- **Was Aziz a relevant child to whom they were the last responsible authority?**
- Section 23A(2): “relevant child” means as a child who— “(a) **is not being looked after** by any local authority . .(b) was, **before last ceasing to be looked after, an eligible child for the purposes of paragraph 19B of Schedule 2**; and (c)**is aged sixteen or seventeen.**”
- Aziz is “not being looked after” due to his custodial sentence. **Was he previously “looked after”?**



# Foster Care Provision

The courts are reluctant to allow local authorities to escape their obligations to accommodate children in need by pretending that a placement is in fact a private fostering arrangement. This issue was considered by the Court of Appeal in a case in 2007 by the name of *D v London Borough of Southwark* [2007] EWCA Civ 182. The court observed that:

- *“We are prepared to accept that, in some circumstances, a private fostering arrangement might become available in such a way as to permit a local authority, which is on the verge of having to provide accommodation for a child, to ‘side-step’ that duty by helping to make a private fostering arrangement. However, **it will be a question of fact as to whether that happens in any particular case.**”*
- *However, **where a local authority takes a major role in making arrangements for a child to be fostered, it is more likely to be concluded that, in doing so, it is exercising its powers and duties as a public authority pursuant to sections 20 and 23.** If an authority wishes to play some role in making a private arrangement, it **must make the nature of the arrangement plain to those involved.** If the authority is facilitating a private arrangement, it must make it plain to the proposed foster parent that s/he must look to the parents or person with parental responsibility for financial support. The authority must explain that any financial assistance from public funds would be entirely a matter for the discretion of the local authority for the area in which the foster parent is living. Only on receipt of such information could the foster parent give informed consent to acceptance of the child under a private fostering agreement.*
- *If such matters are left unclear, there is a danger that the foster parent (and subsequently the court) will conclude that **the local authority was acting under its statutory powers and duties** and that the arrangement was not a private one at all . . .”*

Similarly, in *KS v Bradford MDC* [2014] EWHC 11 (Admin) the Court found that the s. 20(1) duty was triggered and that a child accommodated by her maternal grandmother pursuant to s.20(1) and not as part of a private fostering arrangement.

## Step back again...was Aziz an eligible child under 19B Schedule 2?

- ( 2 )In sub-paragraph (1) “ eligible child ” means, subject to sub-paragraph (3), a child who— (a)is aged sixteen or seventeen; and (b)**has been looked after by a local authority for a prescribed period, or periods amounting in all to a prescribed period, which began after he reached a prescribed age and ended after he reached the age of sixteen.**
- [The Care Planning, Placement and Case Review (England) Regulations 2010 - 40.—(1) . . .the **prescribed period is 13 weeks, and the prescribed age is 14.**

Assuming the foster placement was a placement under s.20 (on checking the facts) Aziz would have been looked after for the prescribed period.

Unrolling the legislative steps forwards again Aziz was an eligible child who became a relevant child and then a former relevant child.

## Stage 2: What assistance is Aziz potentially entitled to and how is that modified by his current sentence?

### Legislative Framework of Assistance for Care Leavers

- **1989 Act Section 23C – Continuing Functions** in respect of former relevant children such as Aziz the duty of the LA is to: take reasonable steps to keep in touch with the young person; appoint a personal adviser and maintain a pathway plan; and provide assistance in relation to living expenses associated with education, training and employment (s24B(1) and (2)) and other assistance to the extent his welfare requires it.
- **1989 Act 23CA Further assistance to pursue education or training** - The LA has duties: to provide a personal adviser; carry out an assessment of the needs with a view to determining what assistance (if any) it would be appropriate to provide; prepare a pathway plan for him; give assistance with living expenses associated with education and training or provide a grant as required. The duties of the local authority subsist for as long as he continues to pursue the programme.
- **Children and Social Work Act 2017 ss 2 and 3** – S.2 sets out the requirement for a local offer for care leavers and s.3 inserts s23CZB - post-21 provision regardless of education.

# Care leavers in the youth justice system: Transition Guidance

The Children Act 1989 guidance and regulations: Volume 3: planning transition to adulthood for care leavers, Chapter 6 – Summary points in relation to Care Leavers in Custody

- Care leavers in custody “will be especially vulnerable and will require carefully planned and well-focused support from their responsible authority.” [6.36]
- The statutory guidance requires:
  - Pathway planning must continue.
  - The young person must be visited on a regular basis (good practice - within ten working days).
  - The responsible authority must liaise with CJS to support the young person emotionally, practically and financially whilst in custody.
  - 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 to give sufficient time for pre-release planning. [6.41]

## Continued: Care leavers in the youth justice system: Transition Guidance

- Plans 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. [6.42]
- Where a care leaver is remanded or sentenced to custody steps are proposed to assist in ensuring that they can access suitable accommodation on their release [6.43]
- As soon as possible, and (ideally) no later than 14 days before release, a care leaver must know details of their transition [6.44]
- There must be clarity about who is responsible for each element of the child's plan. The LA should record these arrangements as part of the pathway plan. [6.45]
- The leaving care service must remain a presence in the young person's life during the period of supervision by the Probation Service. [6.46]

## Summary: Transition Guidance: Volume 3, p14

The local authority which owes duties to a former relevant child under section 23C of the 1989 Act must:

- appoint a personal adviser for that person [section 23CA(2) of the 1989 Act]
- carry out an assessment of the needs of that person with a view to determining what assistance (if any) it would be appropriate for them to provide him [section 23CA(3)(a) of the 1989 Act; the requirements for carrying out the assessment are set out in regulations 4 and 5 of the Care Leavers Regulations]
- Prepare a pathway plan for him [section 23CA(3)(b) of the 1989 Act; the requirements for preparing the pathway plan are set out in regulation 6 of the Care Leavers Regulations]
- To the extent the person's educational or training needs require it, provide financial assistance [section 23CA(4) and (5) of the 1989 Act]

## Education Provision

- See Children Act 1989 s23CA and 23CZB above.
- See also, case of R (Kebede) v Newcastle CC [2014] PTSR 82– The court held that the phrase "expenses connected with his education" in s.24B(2) CA 1989 included tuition fees and was not confined to incidental expenses incurred for the purposes of education. (The same term appears in s23CA(5)(b))
- The Children Act 1989 (Higher Education Bursary)(England) Regulations 2009 provides for a bursary up to £2000.
- Chapter 5 of the Transition Guidance, Volume 3, p43-47- Sets out the detailed planning that should take place for young people continuing in education, including financial and accommodation planning as well as education and careers advice.

## Next Steps

- The local authority appears to be failing in its duties towards Aziz.
- Instructions need to be taken as to his past in care and the criminal case. Inquiries need to be made as to his desire to continue in education and training, potential study locations and funding arrangements.
- If litigation commenced, pre-action correspondence would need to seek disclosure of his social services files, pursuant to the duty of candour in judicial review, in order to ascertain the nature of past foster care arrangements (See R(KI) v Brent [2018] EWHC 1068 (Admin)). Authority should also be obtained from Aziz to request criminal case papers.
- The urgency of any action will depend on Aziz's potential release date but also bear in mind course/ funding application dates.
- Steps will need to be taken by the LA to appoint a PA, ensure visits, conduct an assessment, pathway plan and investigate accommodation arrangements.
- The local authority should also be liaising with the Probation Service (who may potentially be an interested party in these proceedings depending on the offence and release planning).



# SUPPORT FOR ADVOCATES



**Straightforward information about the law** to help children and young people in England. This includes children and young people who are in the care of an English local authority but live in Scotland or Wales.

Visit: [article39.org.uk/on-your-side/](https://article39.org.uk/on-your-side/)

# Article 39

1. The State shall endeavour to secure for its citizens the highest attainable standard of living and to improve public health, to raise the level of nutrition and the standard of living and to promote equal opportunities for all.

2. The State shall, in particular, take steps to secure to all citizens the following:—

- (a) equal pay for equal work for both men and women;
- (b) a fair wage and a fair bonus;
- (c) a reasonable working time and a weekly holiday;
- (d) a safe and sound working condition;
- (e) a just and humane system of retirement benefits;
- (f) a just and humane system of provident funds;
- (g) a just and humane system of gratuity;
- (h) a just and humane system of compensation for workmen in the event of their being laid off or retrenched;
- (i) a just and humane system of compensation for workmen in the event of their being discharged or dismissed;
- (j) a just and humane system of compensation for workmen in the event of their being injured or disabled in the course of their employment;
- (k) a just and humane system of compensation for workmen in the event of their being killed in the course of their employment;
- (l) a just and humane system of compensation for workmen in the event of their being killed or injured in the course of their employment;
- (m) a just and humane system of compensation for workmen in the event of their being killed or injured in the course of their employment;
- (n) a just and humane system of compensation for workmen in the event of their being killed or injured in the course of their employment;
- (o) a just and humane system of compensation for workmen in the event of their being killed or injured in the course of their employment;
- (p) a just and humane system of compensation for workmen in the event of their being killed or injured in the course of their employment;
- (q) a just and humane system of compensation for workmen in the event of their being killed or injured in the course of their employment;
- (r) a just and humane system of compensation for workmen in the event of their being killed or injured in the course of their employment;
- (s) a just and humane system of compensation for workmen in the event of their being killed or injured in the course of their employment;
- (t) a just and humane system of compensation for workmen in the event of their being killed or injured in the course of their employment;
- (u) a just and humane system of compensation for workmen in the event of their being killed or injured in the course of their employment;
- (v) a just and humane system of compensation for workmen in the event of their being killed or injured in the course of their employment;
- (w) a just and humane system of compensation for workmen in the event of their being killed or injured in the course of their employment;
- (x) a just and humane system of compensation for workmen in the event of their being killed or injured in the course of their employment;
- (y) a just and humane system of compensation for workmen in the event of their being killed or injured in the course of their employment;
- (z) a just and humane system of compensation for workmen in the event of their being killed or injured in the course of their employment;