LAW MAP:

Personal advisers

Case studies:

Harper, who became looked after under section 20 of the Children Act 1989 shortly after their 16th birthday, has just turned 18 and is now a care leaver (former relevant child). The leaving care team has told Harper that there's no need for them to have a personal adviser (PA) as they have shown maturity, responsibility and very good independent living skills. Harper's friend has a great PA and Harper feels it's unfair they're not getting one too.

Tim is 22 and he has just been released from prison after serving a 6-year custodial sentence. Tim was the subject of a care order when he first went to prison. Tim tells an advocate he needs help with housing, employment and some health problems.

Satya is about to turn 20. She spent most of her childhood in care, during which time she moved frequently between children's homes and foster families. Just before her 18th birthday, Satya told her social worker she wanted nothing to do with social care in the future. She has now contacted an advocate saying she's changed her mind and would like to get help to return to education.

Most relevant legislation and government guidance:

Children Act 1989

The Care Planning, Placement and Case Review (England) Regulations 2010

Children and Social Work Act 2017

The Care Leavers (England) Regulations 2010

The Children Act 1989 guidance and regulations
Volume 3: planning transition to adulthood for care leavers (2010)

Extending Personal Adviser support to all care leavers to age 25 (2018)

Applying corporate parenting principles to looked-after children and care leavers (2018)

Key:

- Primary legislation
- Secondary legislation
- Statutory guidance

Key points

- Local authorities must appoint a personal adviser (PA) for all eligible children, relevant children and former relevant children (see annex 1 for definitions).
- Local authorities are required to continue the appointment of a PA for all former relevant children until the age of 21 (here the local authority has a duty to act proactively).
- The Children and Social Work Act 2017 amended the law to extend the entitlement to a PA to all care leavers up until the age of 25, regardless of whether they are in education or training. The policy intention behind this change was to ensure "no care leaver [is] left isolated or forced to fend for themselves" (para 11 here). At least once a year, local authorities must let care leavers know that they have the right to have a PA until their 25th birthday.
- Care leavers aged 21-25 who have at any point declined a PA or have not been receiving support from a PA for whatever reason retain the right to request a PA until they are 25. When a young person makes such a request, the local authority must provide a PA (here the local authority has a duty to respond to a request rather than act proactively, like in the case of young people aged under 21).
- PAs have prescribed functions set out in the Care Leavers (England) Regulations 2010; their statutory role is different from that of a befriender or a mentor.
- PAs do not replace social workers for looked after children and it is the social worker's responsibility to co-ordinate all support in line with the child's care plan until they turn 18 (unless they leave care sooner) - see para 3.17 of Volume 3 guidance. It is also the social worker's and not the PA's responsibility to develop a pathway plan for each child preparing to leave local authority care.

Children Act 1989

For definitions of 'eligible', 'relevant' and 'former relevant child', please refer to annex 1.

Local authorities must:

- **Appoint a PA for every eligible child** – Schedule 2 paragraph 19C;
- **Appoint a PA for every relevant child** (unless one has already been appointed for the child when they were an eligible child) – section 23B(2);
- **Appoint a PA for additional categories of relevant children** – sections 23A(3) and 23D*;
  *This includes care experienced young people who, after their 16th birthday were in hospital, a young offender institution or a secure children's home – see regulation 3 of The Care Leavers (England) Regulations 2010.
- **Continue the appointment of a PA for every former relevant child until the age of 21** – section 23C(3)(a) (see section 23C(6) re. the age of 21);
- **Provide every former relevant child aged 21+ with a PA until their 25th birthday** unless the young person informs the local authority they no longer want one – section 23CZB(3).

While all young people under the age of 25 are entitled to a PA under section 23CZB(3), support from a PA will be key for young people who are or who wish to return to education or training. This is to ensure that these young people are supported to access other entitlements without which they may not be able to pursue or continue education. This could include financial assistance to cover the cost of education or help with expenses connected to living near the place of education. Section 23CA is of particular importance in this context.

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The Care Planning, Placement and Case Review (England) Regulations 2010

The name of the PA must be recorded in the:

- Placement plan (for an eligible child) – Schedule 2 paragraph 1(8)(d);
- Detention placement plan (for an eligible child who is on remand) – Schedule 2A paragraph 9(d) ;
- Pathway plan – Schedule 8 paragraph 1.

The views of the PA must be recorded in the assessment of needs which is carried out for all eligible children aged 16+ in preparation for the development of a future pathway plan – regulation 42(2)(h)(iv).

The PA cannot be the same person as the child's independent reviewing officer (regulation 46(3)(c)).

The Care Leavers (England) Regulations 2010

Regulation 8(1) lists the statutory functions of personal advisers towards relevant and former relevant children. Statutory guidance (Volume 3) offers more information about what support might look like in connection with each of the functions, and what is expected of PAs to ensure young people receive high quality and timely support.

(a) To provide advice (including practical advice) and support;

This might include support and information about day to day matters like managing money, including accessing benefits, housing, education, training and employment, and information about health and wellbeing, including accessing health services. It should also include information about leisure, sporting, cultural and other opportunities of interest to young people, in line with their individual interests, wishes and aspirations (para 3.28 of Volume 3).

(b) Where applicable, to participate in the assessment and the preparation of the pathway plan;

The PA is responsible for co-ordinating support set out in the pathway plan and when the young person's individual circumstances change, the PA should help ensure their changing needs are reflected in the pathway plan (para 3.30 of Volume 3).

(c) To participate in reviews of the pathway plan;

The PA must make sure that the young person's pathway plan is regularly reviewed (the minimum frequency of pathway plan reviews is set out in regulation 7), but also that additional reviews take place if, for instance, the young person is facing a crisis (for instance a housing crisis). In such circumstances, the PA should be taking prompt action to try and resolve issues and difficulties while, at the same time, co-ordinating communication with and action by other professionals (paras 3.33-3.34 of Volume 3).

(d) To liaise with the responsible authority in the implementation of the pathway plan;

The PA must be aware of who within the local authority is responsible for putting in place the support set out in the young person's pathway plan. The PA should know how to communicate with the relevant people within the local authority, including in cases where concerns need to be escalated (para 3.35 of Volume 3).

(e) To co-ordinate the provision of services, and to take reasonable steps to ensure that the child makes use of such services and that they are appropriate to the child's needs

It is the PA's role to identify and co-ordinate the support that is needed to effectively support the young person and, as part of that, to build relationships with other professionals. For the young person to feel they are getting the support they need, they must feel listened to and respected, including through opportunities to express their wishes, influence decisions and choose what is right for them (paras 3.36-3.37 of Volume 3).

(f) To remain informed about the relevant child's or former relevant child's progress and wellbeing;

The PA should keep in touch with the young person they are supporting, including by meeting them in person (unless this goes against the young person's wishes). How often and in what way/s the PA and the young person keep in touch should be agreed together in line with the young person's wishes, needs and preferences, and should be included in the pathway plan (para 3.38 of Volume 3).

(g) To keep a written record of contacts with, and of services provided to, the relevant or former relevant child.

The young person's pathway plan should not be seen as a piece of paper or a box-ticking exercise but a 'living document' which shows clearly how the local authority is supporting the young person (paras 3.41-42 of Volume 3). Young people should be given a copy of their pathway plan (para 3.42).

Regulation 8(2) specifies additional functions of PAs in situations where the local authority is providing accommodation to the young person (relevant child or former relevant child). The PA must visit the child or young person at the accommodation within seven days of them moving in, then again before their pathway plan is reviewed and, subsequently, at least once every two months. However, if problems or difficulties arise, following the minimum statutory timescales will not be good enough and the PA will be expected to keep in touch and support the young person in a way that best responds to their individual circumstances (para 3.39 of Volume 3). Para 3.40 of Volume 3 states:

Visits should often be scheduled to take place at the accommodation where the young person lives. On each occasion the PA must consider whether this accommodation continues to be suitable for the young person. The PA will need to observe the general state of the property and check how well the [young person] is managing in their accommodation, including that they are managing their financial commitments for rent, utilities etc. Where a young person is living in semi-independent accommodation linked to the provision of housing related support, the PA should monitor how well the accommodation, with its related support, is meeting the young person's needs. They should liaise closely with the young person and their housing support worker to identify and resolve any problems.*

The Children Act 1989 guidance and regulations Volume 3: planning transition to adulthood for care leavers 2010:

Stability and continuity of relationships should be supported and, ideally, the young person should have the same PA before and after their 18th birthday(unless this goes against their wishes). If a new PA has to be appointed, the local authority should recognise it as a potentially significant change for the young person and transfer responsibility from one PA to another at a time when it is least likely to cause disruption to the young person (para 3.19).

PA's qualifications and skills: there's an expectation that PAs should have a good understanding of the human development that takes place between childhood and adulthood, and the additional vulnerabilities and challenges faced by care experienced children and young people. There's also a clear expectation in terms of "a working knowledge of…the legal framework affecting care leavers (in particular the 1989 Act and Children (Leaving Care) Act 2000 and related Regulations)" (para 3.21; please also refer to appendix A of Volume 3 statutory guidance for what is expected of experienced and specialised PAs).

Young people's wishes and feelings when choosing a PA: Young people will have views and expectations about the qualities and skills they need from their PA; they may have individual preferences concerning the PA's gender and ethnicity. Statutory guidance sets a clear expectation for local authorities "to give careful consideration to any preferences expressed by the young person" and involve young people in the process of matching a PA who best reflects their needs and wishes. Another key deciding factor will be the specific skills and abilities necessary for the PA to build a relationship with and effectively support young people will communication needs, and "appropriate training, interpretation or facilitation" should be available to PAs (paras 3.24-3.26).

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Extending Personal Adviser support to all care leavers to age 25:

The PA acts as a focal point for the young person, ensuring that they are provided with the practical and emotional support they need to make a successful transition to adulthood*, either directly or through helping the young person to build a positive social network around them.* ***All care leavers should know who their PA is and how to contact them. Throughout their transition to adulthood and independent life, care leavers should be able to rely on consistent support from their PA, who is the designated professional responsible for providing and/or co-ordinating the support that the young person needs. This includes taking responsibility for monitoring, reviewing and implementing the young person's pathway plan.*** (Para 13)

Before the young person's 21st birthday, their PA should discuss their wishes with them to find out if they'd like to continue to receive support after turning 21. If the young person declines, this should be noted in their pathway plan. The young person can request PA support any time after that until their 25th birthday, even after initially declining support, and the local authority must provide a PA (paras 14-15).

Where young people over the age of 21 request support connected to, for instance, education, managing money, health problems, pregnancy, housing difficulties or release from custody, the PA "should provide support for as long as that issue remains and address any new issues if they arise", provided the young person is happy with that (paras 20-21).

Deciding how often and in what way the PA and the young person keep in touch should be agreed in dialogue with the young person and should reflect the young person's individual needs and preferences. What is agreed should be reflected in the young person's pathway plan (paras 24-25).

Applying corporate parenting principles to looked-after children and care leavers:

A strong ethos of corporate parenting should be a priority for everyone, and it should influence how local authorities meet their responsibilities towards looked after children and care leavers (paras 1.2, 1.4).

The corporate parenting principles (set out in section 1, Children and Social Work Act 2017; see also annex 2 below) should inform how local authorities and those acting on their behalf, like PAs, carry out their legal responsibilities towards children and young people. Rather than thinking about the minimum statutory requirements, all those supporting care experienced young people should be guided by ambition and high aspirations for each and every young person (para 2.4).

There is an expectation on local authorities to ensure PAs have the skills and training to enable them to help children and young people access the services they need (para 4.14).

The role of the PA in protecting young people's human rights:

Local authorities and all those acting on their behalf must act in accordance with human rights obligations under the European Convention on Human Rights (ECHR). This requirement is expressed in section 6(1) of the Human Rights Act 1998. It is therefore important for PAs to be aware of the rights and freedoms protected by the ECHR and consider these routinely as part of their role, including when reviewing a young person's pathway plan.

In situations where a young person's human rights are being breached, the PA will be well placed to challenge the local authority (or another public authority, e.g., social landlord) and support the young person to access independent legal advice and representation.

ANNEX 1: categories of care leavers - definitions

ELIGIBLE CHILD

Schedule 2 paragraph 19B, Children Act 1989:

- A child who is aged 16 or 17 AND
- Is currently looked after AND
- Has been looked after for a cumulative* period of at least 13 weeks since the age 14**.

*Cumulative but not necessarily consecutive. However, planned placements in a series of short-break placements where each lasts no more than 17 days and where afterwards the child returns to live with a parent or other carer cannot be counted towards the 13 weeks. However, if short, planned placements exceed 75 days in total in any 12-month period, they will count towards the 13 weeks needed to have full leaving care rights – regulation 48(2) of The Care Planning, Placement and Case Review (England) Regulations 2010.

**The minimum period ('prescribed period') of 13 weeks and the age of 14 is defined in regulation 40 of The Care Planning, Placement and Case Review (England) Regulations 2010.

RELEVANT CHILD

Either – under section 23A(2), Children Act 1989:

- A child who is aged 16 or 17 AND
- Is no longer looked after AND
- Was (before ceasing to be looked after) an eligible child (i.e., was looked after for a cumulative period of 13+ weeks since age 14 which ended after their 16th birthday).

Please note: There are limited circumstances when children, despite meeting the above conditions, will no longer be considered relevant children because they have returned and settled well at home.

Or – under regulation 3, The Care Leavers (England) Regulations 2010:

- A child who is aged 16 or 17 AND
- Is no longer looked after AND
- After their 16th birthday was in hospital, a young offender institution or a secure children's home AND
- Was (before ceasing to be looked after) looked after for a cumulative* period of 13+ weeks since age 14 which ended after their 16th birthday.

*Cumulative but not necessarily consecutive. However, planned placements that each lasted up to 4 weeks where afterwards the child returns to live with a parent or other carer cannot be counted towards the 13 weeks – regulation 3(3) of The Care Leavers (England) Regulations 2010.

FORMER RELEVANT CHILD

Section 23C(1), Children Act 1989

- A young person who is aged 18-25 AND
- Was a relevant child in the past OR
- Immediately before ceasing to be looked after at 18 was an eligible child.

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ANNEX 2: Corporate parenting principles

Section 1, Children and Social Work Act 2017.

In carrying out their functions towards eligible children, relevant children and former relevant children, local authorities in England must have regard to the need to:

(a) act in the best interests of children and young people and promote their physical and mental health and well-being;

(b) encourage children and young people to express their views, wishes and feelings;

(c) take into account children and young people's views, wishes and feelings;

(d) help children and young people gain access to, and make the best use of, services;

(e) promote high aspirations for children and young people, and support them to achieve best possible outcomes;

(f) ensure children and young people are safe and that they have stability in their home lives, relationships, and education/work;

(g) prepare children and young people for adulthood and independent living.

For comprehensive information about leaving care entitlements, please visit rights4children.org.uk/leaving-care/.