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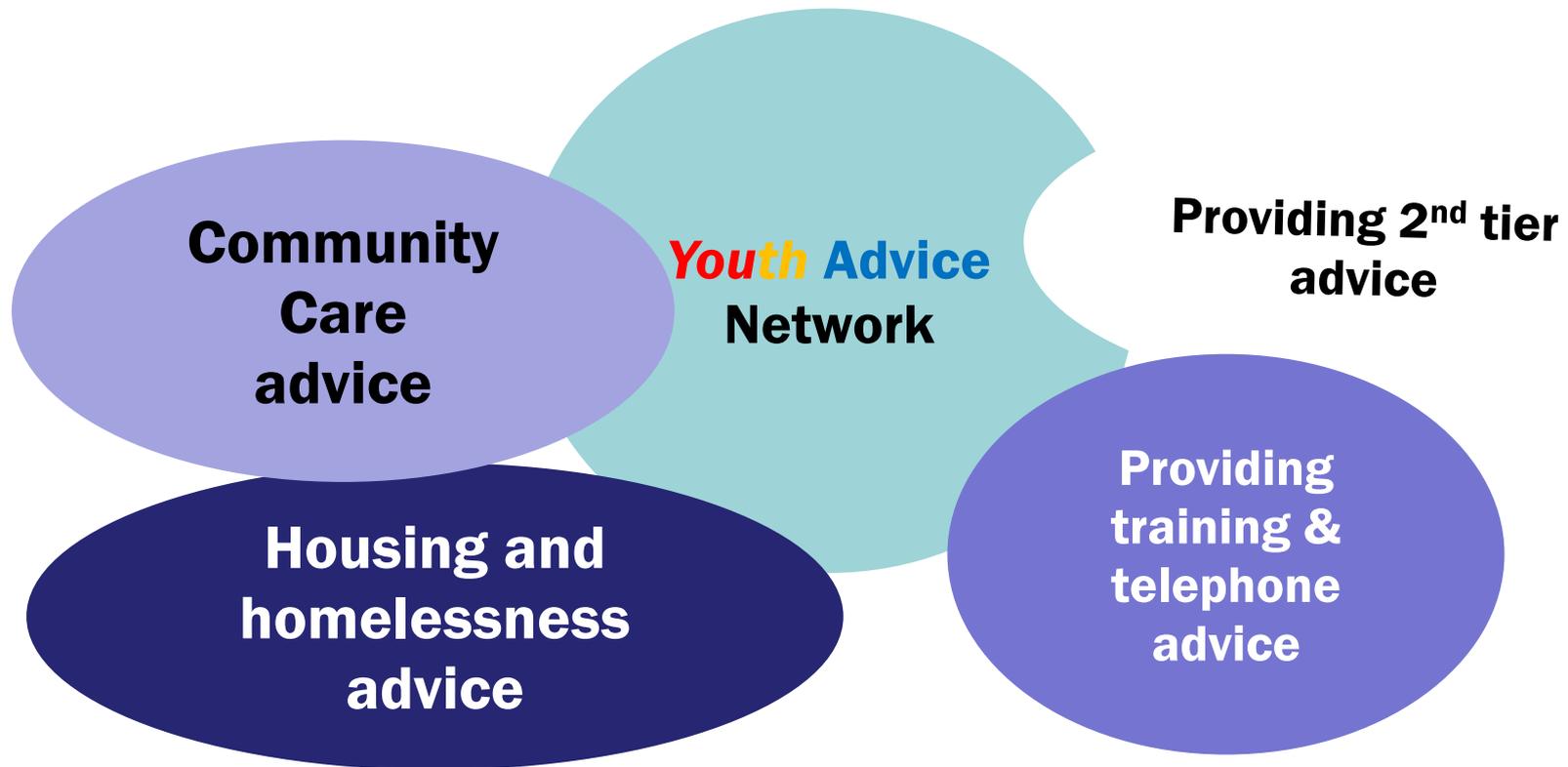
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How the  
Children & Families Act 2014  
& Care Act 2014  
work for Young People

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Youth Legal

July 2016

**FREE CONFIDENTIAL INDEPENDENT SPECIALIST  
LEGAL ADVICE IN  
HOUSING and COMMUNITY CARE  
FOR YOUNG PEOPLE AGES 16-25**



# CHILDREN & FAMILY ACT / CARE ACT INTRODUCTION

The Children and Families Act introduced:

- a new system of care for disabled young people and those with Special Educational Needs (SEND) from birth to 25.

The Care Act provides for:

- disabled people over 18
- young people between 18 and 25 will have rights that overlap the two Acts

Today we will be looking at what is relevant for young people in the two Acts and the link/overlaps between the two Acts.

What do you want to get from the training?

# The structure of the law

- Acts of Parliament give public bodies such as the local authority and the NHS powers and/or duties to carry out their work. They must comply with powers and duties and can't act outside them or it is unlawful.
- They are also given certain powers where they have discretion whether or not to do something, but they are not allowed to fetter those powers and must consider in each case whether or not to use them.
- Laws are also made with secondary legislation called statutory instruments and include regulations.

**Statutory Guidance was also introduced for both the Acts:**

**Special educational needs and disability (SEND) code of practice: 0 to 25 years** at <https://www.gov.uk/government/publications/send-code-of-practice-0-to-25>

**Statutory guidance to support local authorities implement the Care Act 2014**, which is now online only at <https://www.gov.uk/guidance/care-and-support-statutory-guidance>.

Care Act fact sheets can be accessed at <https://www.gov.uk/government/publications/care-act-2014-part-1-factsheets/care-act-factsheets>.

The authorities **must** have regard to the statutory Code of Practice and Guidance, and if an authority does depart from it they must have good reason.

When the guidance states '**must**' it refers to a statutory requirement under primary legislation, regulations or case law.

# AIMS

This seminar covers community care for disabled young people under 25, young carer's and care leaver's rights. However, we will mainly be looking at the duties owed to disabled young people's under:

- Part 3 of the Children & Family Act, which makes changes to provision for children and young people with special educational needs and disabilities (SEND);
- Part 5 of the Children & Family act under which rights for children in foster care to stay with their foster carers past 18 "Staying Put", and Carer's rights are set out.
- Young people 18-25's rights under the Care Act. (Although most can apply to over 25s.)

You should leave with a good knowledge of your service users rights under the Acts, how to advocate for those rights and where to get legal advice if you believe their rights are being withheld.

Part 3 of the Children and Families Act 2014 is entitled *Children and Young People In England with Special Educational Needs and Disabilities*.

It places duties on local authorities and other services in relation to both disabled children and young people and those with SEN.

Part 5 of the Act places duties with regard to Young Carer's and Parent Carer's rights. The SEND Code of Practice only relates to these Parts of the Act.

The Care Act repealed most of the principle adult social care legislation to consolidate and simplify the existing legislation.

The Act was to prioritise individual wellbeing for disabled people over 18 putting people in control of their care and support by their care being person-centred to achieve the outcomes they want. It also focuses on preventing needs arising or delaying the need for care.

# EHC PLAN – SOCIAL CARE PLAN - JOINT WORKING

## EHC Plan

- The EHC Plan is a legal document which includes:
  - a child or young person's special education, health and social care needs,
  - what services will be provided
  - what outcomes the child wishes to achieve as a result of the support
- It replaces the current system of Statements and Learning Difficulty Assessments
- Children, young people and their families must be **involved** in discussions and decisions about their individual support and local provision
- The right to make requests and decisions under the Act will apply directly to disabled young people and those with SEN **over compulsory school age** rather than to their parents

- For young people with EHC plans, there must be a clear focus on preparing for adulthood from age 14 (year 9)
- This requires coordinated multi agency support throughout transition to enable young people to achieve good life outcomes
- It includes information advice and support, and preparing for adulthood reviews as well as EHC plans
- Local authorities may continue EHC plans until the end of the academic year during which the young person turns 25
- Local authorities must consider whether education or training outcomes have been achieved before ceasing a plan
- Social care provision to be specified in the EHC plan includes any social care provision which must be made for a child or young person under 18 by the local authority as a result of section 2 of the Chronically Sick and Disabled Persons Act 1970.
- It may include provision made under section 17 of the Children Act which is not covered by the Chronically Sick and Disabled Persons Act 1970, for example residential short breaks.
- It may also include adult social care provision for young people aged 18-25 with EHC plans.

## Joint Working

- S25 Children and Families Act 2014, states local authorities **must** carry out their statutory duties with a view to making sure that services work together where this promotes children and young people's wellbeing or improves the quality of special educational provision
- Local authorities **must** work with one another to assess local needs. Local authorities and health bodies **must** have arrangements in place to plan and commission education, health and social care services jointly for children and young people with SEN or disabilities (S26).

The Care Act 2014 includes:

- General duties on local authorities to promote integration and on local authorities and “relevant partners” (including the NHS) to cooperate generally and in relation to individuals.
- Joint commissioning that encompasses the transition to adult services will need to involve a wider range of partners.
- The Better Care Fund, provided for under the Care Act, was created to improve the lives of vulnerable people by providing them with a integrated health and social care service, however it is not new money, but taken from the budget
- Provides for authorities to promote diversity, quality, and the efficiency and effectiveness of the operation of the market for services for meeting care and support needs.

## Children's social care

If a child or young person has been assessed as having social care needs in relation to their SEN or disabilities the authority:

- **must** secure social care provision under the Chronically Sick and Disabled Persons Act (CSDPA) 1970 which has been assessed in their EHC plan
- **must** undertake reviews of EHC plans where there are social care needs
- should ensure that looked after children and care leavers assessed care needs are planned and coordinated to avoid duplication and delay in meeting their education, health and social care needs.

Whether or not young people with SEN or disabilities turning 18 have an EHC plan or have been receiving services from children's social care they may still be eligible for adult social care services.

A person can request a care needs assessment.

If a child is receiving services from children's services already transition planning must be undertaken (see below).

## **THE LOCAL OFFER**

S 30 of the Children and Families Act requires local authorities to publish and maintain a local offer.

The local offer is information that sets out the education, health and social care provision that the local authority expects to be available for disabled children and young people and those with SEN.

This specifically includes provision that will help them prepare for adulthood and should be developed by local authorities and their health partners, together with children, their parents and young people.

Wandsworth's local offer is at

<http://fis.wandsworth.gov.uk/kb5/wandsworth/fsd/localoffer.page>

# Family Information Service

Your family friendly guide



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## LOCALoffer

Wandsworth's Local Offer for 0-25 year olds with special educational needs and disabilities



### Local Offer

Information for children and young people aged 0 - 25 years with SEND and their families, living in Wandsworth.

Local Offer

Where to

# Where to start?

Early Years 

Education 

Education Health and Care Plans 

Health 

Housing 

Leisure, activities and sport 

Preparing for adulthood 

Social Care and Short Breaks 

Support and advice 

WAND card 

Travel and Transport 

What do you think? 

Can't find what you are looking for?

You can call or email the Family Information Service

- [fis@wandsworth.gov.uk](mailto:fis@wandsworth.gov.uk)
- 020 8871 7899 or
- text 07797 805 456 - text FIS at the start of your message

If you would prefer to meet someone to talk, with an interpreter or signer if you need one, please call FIS to make an appointment at the Town Hall.

We can see people who drop in to the Customer Centre at the Town Hall, but only if an FIS Disability Information Officer is available.

Related Links [Adult Care Information Service \(ACIS\)](#)

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## **CARE ACT GENERAL DUTIES / OVERARCHING WELL BEING PRINCIPLE**

The well being principle is the guiding principle to the Care Act and local authorities must promote the wellbeing of people in exercising any of their care and support functions in order to achieve the outcomes the person wants in their life.

It not only applies to people over 18, but can apply to children, their carers and to young carers when going through transition to adulthood.

It is a shift from providing particular services that people have to fit into, to recognising that everyone's needs are different and to meeting that person's specific needs.

## Care Act Guidance definition of wellbeing

1.5 'Wellbeing' is a broad concept, and it is described as relating to the following areas in particular:

- personal dignity (including treatment of the individual with respect)
- physical and mental health and emotional wellbeing
- protection from abuse and neglect
- control by the individual over day-to-day life (including over care and support provided and the way it is provided)
- participation in work, education, training or recreation
- social and economic wellbeing
- domestic, family and personal
- suitability of living accommodation
- the individual's contribution to society<sup>[1]</sup>

The guidance states that there is no hierarchy, that when considering "well being" all should be considered of equal importance.

## **Preventing people developing care and support needs**

The Care Act brings into statutory force the duty to provide or arrange services that help prevent, delay or reduce people's needs for ongoing care and support.

This is both for carers and adults and also is part of the well being principle and is to support people to live as independently as possible for as long as possible.

Local authorities have to have regard to various factors and identify:

- services, facilities and resources that are already available in the area
- people who might have care and support needs which are not being met
- carers in the area who might have support needs that are not being met

If a person refuses to accept preventative assistance but has unmet needs, the authority must offer an assessment.

## CARE ACT ASSESSMENTS

The duty to undertake an assessment for any adult, over 18, arises “where it appears to the local authority that an adult may have needs for care and support.” (S9(1)).

It cannot refuse because it thinks the person does not have eligible needs or because of their financial situation.

It also has to take a whole family approach, that is taking a holistic view of the person’s needs for care and support and how those impact on other members of the family or support network.

A number of factors have to be considered, such as:

- the person’s needs and how they impact on their wellbeing – for instance, a need for help with getting dressed or support to get to work
- the outcomes that matter to the person – for example, whether they are lonely and want to make new friends
- the person’s other circumstances - for example, whether they live alone or whether someone supports them

The assessment could be on line, on the phone, a supported self-assessment or face to face assessment.

The authority must consider a person's mental capacity to understand and express themselves.

If there is a concern the person must be supported in her/his decision making, helped to be as involved as possible in the assessment, and the authority must carry out a capacity assessment under the Mental Capacity Act.

Or consider appointing an Independent Advocate (see below).

After carrying out the assessment, the local authority will then consider whether any of the needs identified are eligible for support.

Also no consideration can be given to whether or not the person has a carer until after their needs have been assessed.

## **NHS Continuing Healthcare**

If it appears during the assessment that a person may be in need of NHS Continuing Healthcare (NHS CHC), local authorities must notify the Clinical Commissioning Group (CCG).

Where the individual has been found to have a 'primary health need' a package of on-going care will be arranged and funded solely by the NHS.

There is no limit placed on NHS CHC packages of support.

People who require a package of provision by both the local authority and the NHS, both local authorities and CCGs have a responsibility to ensure that the assessment takes place in a timely and consistent manner.

If there is a dispute as to who should pay for the particular provision, then local authorities and CCGs must have an agreed local disputes resolution process and any dispute should not delay the provision of the care package as there should be a protocol that sets out how it will be dealt with.

As all care needs are not met by the State, the local authority uses an eligibility framework to decide which needs are eligible to be met by public care and support.

## ELIGIBILITY CRITERIA

The criteria is set out in regulations that set a national minimum threshold for eligibility, that makes eligibility consistent across England.

The person will have eligible needs if they meet all of the following set out in the **Care and Support (Eligibility Criteria) Regulations 2014**:

Needs which meet the eligibility criteria: adults who need care and support

2.—(1) An adult's needs meet the eligibility criteria if—

- (a) the adult's needs are caused by a physical or mental impairment or illness;
- (b) as a result of the adult's needs the adult is unable to achieve an outcome specified in paragraph (2); and
- (c) as a consequence there is, or is likely to be, a significant impact on the adult's well-being.

As a result of the needs, the adult is unable to achieve 2 or more of the following:

- a) managing and maintaining nutrition
- b) maintaining personal hygiene
- c) managing toilet needs
- d) being appropriately clothed
- e) maintaining a habitable home environment
- f) being able to make use of the home safely
- g) developing and maintaining family or other personal relationships
- h) accessing and engaging in work, training, education or volunteering
- i) making use of necessary facilities or services in the local community including public transport and recreational facilities or services
- j) carrying out any caring responsibilities the adult has for a child

## The Care and Support (Eligibility Criteria) Regulations 2014

...

(4) For the purposes of this regulation an adult is to be regarded as being unable to achieve an outcome if the adult—

- (a) is unable to achieve it without assistance;
- (b) is able to achieve it without assistance but doing so causes the adult significant pain, distress or anxiety;
- (c) is able to achieve it without assistance but doing so endangers or is likely to endanger the health or safety of the adult, or of others; or
- (d) is able to achieve it without assistance but takes significantly longer than would normally be expected.

(5) Where the effects of an adult's needs fluctuate, in determining whether the adult's needs meet the eligibility criteria, the local authority must take into account the adult's circumstances over such period as it considers necessary to establish an accurate indication of the adult's level of need.

As a consequence, there is or is likely to be a significant impact on the adult's wellbeing, including the following:

- a) personal dignity (including treatment of the individual with respect)
- b) physical and mental health and emotional wellbeing
- c) protection from abuse and neglect
- d) control by the individual over day-to-day life (including over care and support provided and the way it is provided)
- e) participation in work, education, training or recreation
- f) social and economic wellbeing
- g) domestic, family and personal relationships
- h) suitability of living accommodation
- i) the individual's contribution to society

Once eligibility has been determined, and the local authority has decided it will meet the person's needs, it must:

- carry out care and support planning;
- carry out a financial assessment if it wants to charge an adult;
- also confirm whether or not the adult is ordinarily resident.

# Case Study 1



## **CARE AND SUPPORT PLANNING**

a person must play a strong role in the planning process if they choose to and it must be “person-centred”.

They should know that the plan “belongs” to them, if they are able and want to be so involved.

It should be undertaken with the authority, any carers they have and any other person the individual wants involved.

Provision of needs can also include non eligible needs as the authority has the discretion to meet urgent needs before an assessment of eligibility is determined, ie a homeless family, or terminally ill person.

The final plan must always contain certain elements, as follows:

- the needs identified by the assessment
- whether, and to what extent, the needs meet the eligibility criteria
- the needs that the authority is going to meet, and how it intends to do so
- for a person needing care, for which of the desired outcomes care and support could be relevant
- for a carer, the outcomes the carer wishes to achieve, and their wishes around providing care, work, education and recreation where support could be relevant
- the personal budget
- information and advice on what can be done to reduce the needs in question, and to prevent or delay the development of needs in the future
- where needs are being met via a direct payment (see chapter 12), the needs to be met via the direct payment and the amount and frequency of the payments

In providing services the authority can now take into consideration what services an informal carer provides willingly, and it is not under a duty to provide services in place of these. Further it will also look at what universal services are available that might meet need.

## **TRANSITION TO ADULTHOOD**

The Care Act, Children and Families Act Children Act, The Chronically Sick and Disabled person Act 1970 (as amended) and the Children Act 1989 (as amended) change the law to provide for arrangements for the timely and organised transition of disabled young people to adult services.

The Care Act 2014 places a duty on local authorities to conduct transition assessments for children, children's carers and young carers where there is a likely need for care and support after the child in question turns 18 and a transition assessment would be of 'significant benefit'. It sets out what is supposed to occur during the transition process from children's to adult services.

Under the Children & Families Act the EHC Plan should help with the preparation for the transition process for those children with special education needs and should begin in Year 9. Education should take the lead in transition planning unless there are substantial services being received from Health or Social Care. That Act also amended the Children Act 1989 to include provision for continuation of care services.

The Guidance states that the local authorities must carry out a transition assessment of anyone when there is significant benefit to the young person or carer in doing so, and if they are likely to have needs for care or support after turning 18. The definitions of “sufficient benefit” and “likely need” are as follows:

***Likely need***

*The duty to conduct a transition assessment applies when someone is likely to have needs for care and support (or support as a carer) under the Care Act when they or the person they care for transitions to the adult system.*

***Significant benefit***

*A transition assessment must be conducted for all those who have likely needs (see above), however the timing of this assessment will depend on when it is of significant benefit to the young person or carer. This will generally be at the point when their needs for care and support as an adult can be predicted reasonably confidently, but will also depend on a range of other factors discussed in the section below ‘When a transition assessment must be carried out’.*

Both the Care Act and SEND Code of Practice state that disruption to the young person's life should be minimised.

There is a duty on the local authority to identify young people with disabilities and young carers who may require assessments for adult care.

The guidance stresses the importance of families being able to know and understand what support they are likely to receive after transition into the adult system.

Stress is also put on the planning being carried out so that there is no gap in provision to meet their needs.

It is suggested that the authority should provide an indicative personal budget. We do not go into personal budget in this paper however the SEN code of practice at Chapter 9 set out the right to a personal budget for people with EHC plans, and chapter 11 of the Care Act guidance does for personal budgets under the Care Act.

Transition assessments under the Care Act should be combined with the young person's EHC assessments if s/he has one, unless there are specific circumstances to prevent it.

## **Combining EHC plans and care and support plans after the age of 18**

EHC plans under the Children and Families Act can continue until the age of 25

After the young person turns 18, the care and support aspect of the plan will be provided under the Care Act.

The EHC plan must contain the statutory care and support plan to form the basis of the social care element.

The EHC plan should clearly mark out the elements that are directly related to SEN and it must clearly set out the care and support which is reasonably required by the learning difficulties and disabilities that result in the young person having SEN.

Although there is talk about combining budgets, there are still separate budgets for adult care, education and health and disputes will still arise about who pays for what.

A young person should not suffer any gap in their care due to disputes between the authorities.

The authority must indicate which are the young person's eligible needs to enable the young person to know what care and support they may receive once children's services cease and they must provide information and advice about how those needs that are not eligible may be met by possible provision and support in their local area.

Young people with autism have a right to a community care assessment and their parents to a carer's assessment and there is a duty on the SENCO to inform them of their rights under the Autism Strategy Guidance.

If a person would have substantial difficulty in understanding the information or of communicating their view, wishes and feelings during the assessment, and there is nobody else appropriate to act on their behalf the Care Act places a duty on local authorities to provide an independent advocate to facilitate the involvement in the process.

# Case Study 2



## INDEPENDENT ADVOCACY SUPPORT

When a person first approaches for an assessment, the authorities must consider whether the adult would experience substantial difficulty in any of these 4 areas:

- understanding the information provided;
- retaining the information;
- using or weighing up the information as part of the process of being involved;
- and communicating the person's views, wishes or feelings.

Local authorities must arrange an independent advocate to facilitate:

- the involvement of a person in their assessment, including transition assessment
- the preparation of their care and support plan
- the review of their care plan,
- safeguarding enquiries and SARs if 2 conditions are met.

## The Care and Support (Independent Advocacy Support) (No. 2) Regs 2014

3. In deciding whether an individual would experience substantial difficulty of the kind mentioned in section 67(4) of the Act (difficulty in understanding information etc.), a local authority must have regard to—

- (a) any health condition the individual has;
- (b) any learning difficulty the individual has;
- (c) any disability the individual has;
- (d) the degree of complexity of the individual's circumstances, whether in relation to the individual's needs for care and support or otherwise;
- (e) where the assessment or planning function is the carrying out of an assessment, whether the individual has previously refused an assessment(5); and
- (f) whether the individual is experiencing, or at risk of, abuse or neglect.

*“I want to end on some striking research which was covered yesterday by the brilliant team at Community Care. It concerns the new right to advocacy under the Care Act 2014, which is absolutely essential if that Act is going to make any real difference to people's lives. Yet we learn that advocacy referrals are ‘way below’ expected levels; Reading council expected to provide 4,000 hours of Care Act advocacy this year, yet six months in they've only provided 170 hours. And this is a council that says it is actively promoting the new right. So we have to keep pushing to make these rights real.”*

# INFORMATION AND ADVICE

## Children & Families Act

Local authorities now have a duty to offer information, advice and support on matters relating to SEN and disability. This should include:

- local policy and practice
- the Local Offer
- personalisation and Personal Budgets
- law on SEN and disability, health and social care, through suitably independently trained staff
- advice for children, young people and parents on gathering, understanding and interpreting information and applying it to their own situation
- information on the local authority's processes for resolving disagreements, its complaints procedures and means of redress
- Healthwatch advice to patients and their families

# Care Act

## What should be provided – information and advice content

The authorities must ensure that information and advice is provided on:

- the care and support system locally – about how the system works
- how to access the care and support available locally – where, how and with whom to make contact, including information on how and where to request an assessment of needs, a review or to complain or appeal against a decision
- the choice of types of care and support, and the choice of care providers available in the local authority's area – including prevention and reablement services and wider services that support wellbeing.
- how to access independent financial advice on matters relating to care and support – about the extent of their personal responsibilities to pay for care and support, their rights to statutory financial and other support, locally and nationally, so that they understand what care and support they are entitled to from the local authority or other statutory providers.
- how to raise concerns about the safety or wellbeing of an adult with care and support needs and also consider how to do the same for a carer with support needs.

## Staying Put

Staying Put is an arrangement where a looked after child who is living with foster parents and is leaving care at age 18, can opt to remain with her/his foster carer until finishing their education. It was piloted for some time but has now been put on statutory footing in s23CZA Children Act 1989 amended by the Children and Families Act 2014:

Arrangements for certain former relevant children to continue to live with former foster parents

- (1) Each local authority . . . have the duties provided for in subsection (3) in relation to a staying put arrangement.
- (2) A "staying put arrangement" is an arrangement under which--
  - (a) a person who is a former relevant child by virtue of section 23C(1)(b), and
  - (b) a person (a "former foster parent") who was the former relevant child's local authority foster parent immediately before the former relevant child ceased to be looked after by the local authority continue to live together after the former relevant child has ceased to be looked after.

# **YOUNG CARERS (Transition) & CARERS**

Presented by John Hopkins, Young Adult Carers Worker , Wandsworth Carers' Centre on behalf of Carers Trust

## REMEDIES

Authorities must make known that it is possible to resolve disagreements across education, health and social care through the local authority's Information, Advice and Support Service.

The Children and Family Act provides for disagreement resolution and mediation procedures and education, health and social care providers should all have complaints procedures which give details of their complaint service.

The Care Act was to provide for an appeals process but that has yet to be implemented.

The first step is to try to resolve the issue informally by speaking to or writing to the department involved.

If the complaints procedure does not produce a satisfactory result then you can take most complaints to the Local Government Ombudsman. All complaints have to be brought within a year of finding out you have an issue to complain about.

Children and Adult social services, and health service disputes can be resolved through the courts through judicial review of the authority's decision to do or not to do something. In particular emergency applications can be made for interim relief if support is necessary while waiting for a court decision which can take some time.