



www.blackbeltadvocacy.com

Independent Advocacy with Looked After Children

Introduction

Webinar

Jane Perks



This presentation will cover:

- Which types of Settings that Looked After Children are in
- What is your advocacy role
- What children and young people want from their advocate
- Coming into Care process/s
- Introduction to United Nations Convention on the Rights of the Child
- Introduction to main pieces of Legislation for Looked After Children

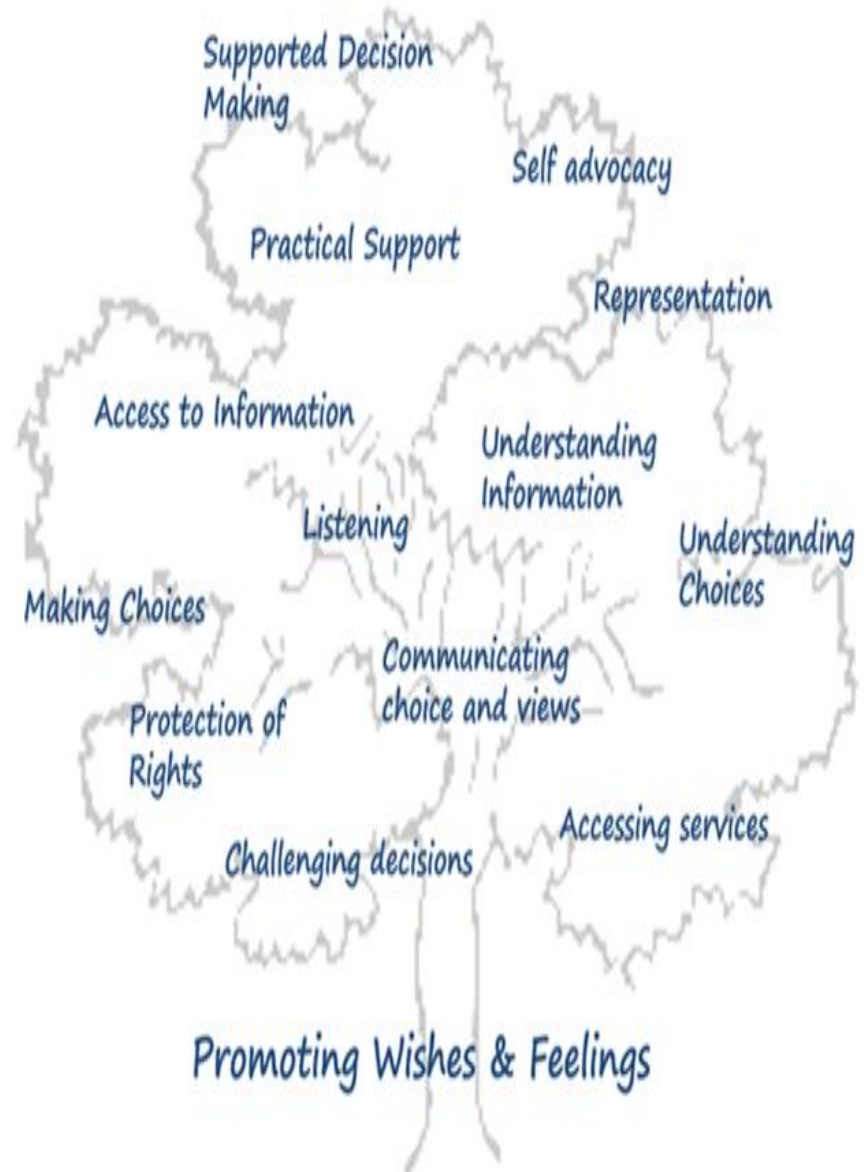
Which groups
of children and
young people
do you work
with?

How many of
these Groups
could have
Looked After
Status

- 16 and 17 year olds who are homeless
- 16 and 17 year olds who lack mental capacity
- Care leavers
- Children and young people in custody
- Children and young people in England who are detained under the Mental Health Act
- Children and young people in receipt of social care services
- Children and young people living in children's homes
- Children in receipt of health services who wish to make a complaint,
- Children who may continue to need care and support in adulthood
- Children with special educational needs and disabilities
- Children and young people who go missing
- Young carers
- *Young People Leaving Care – up to 25ys*
- Children subject to child protection process

What is Your Advocacy Role?

- Offer free, confidential, child led advocacy
- you'll do this by:
- Empower and Enable
 - Support self-advocacy
 - Represent
 - Promote and uphold rights
 - Honest and Boundaried




Children's Commissioner for England Report Advocacy for Children - June 19

Advocates should work with the core values of:

DIGNITY	Advocates respect the equal worth and dignity of every child, working with children as a partner to uphold their rights.
PERSONAL POWER	Advocates help to build up children's personal power.
YOUR PACE	Advocates work at the individual's pace and follow their instructions.
INFLUENCE	Advocates do whatever they can to help children make and influence decisions.
TRUST	Advocates earn children's trust. They are there for children, not for professionals or service providers.
RESULTS	Advocacy should achieve results. The child is the judge of whether having an advocate has helped, or not.
IMPROVE	Advocacy services are designed for and with children; they learn from children's views and ideas to constantly improve.

Why do children and young people come into Care

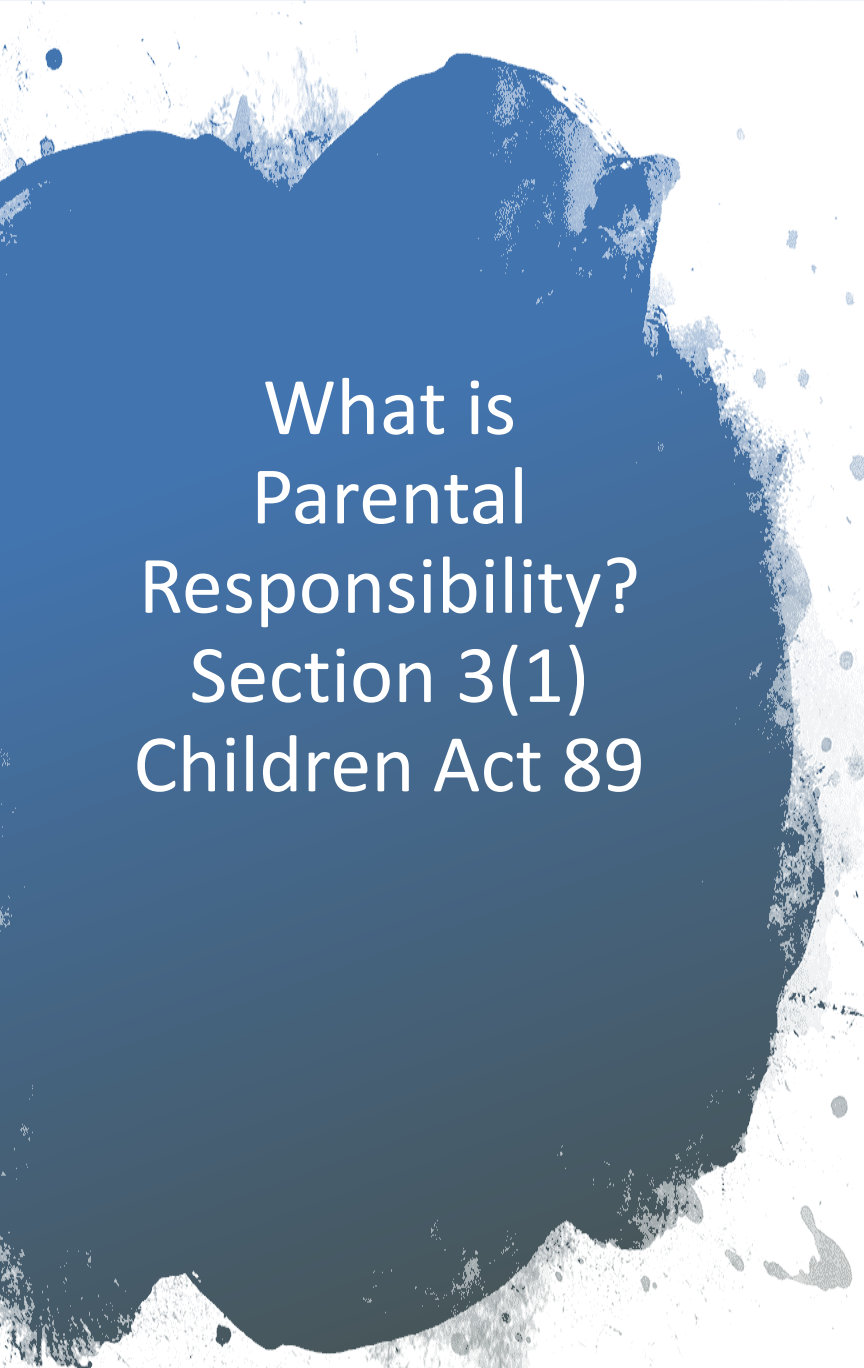
- The death of one or both parents;
- Abandonment by the parents;
- Permanent relinquishment;
- An administrative or court decision that removal from parental care is in the child's best interests (because of abuse, neglect or exploitation);
- Voluntary placement by parents on a temporary basis, as for instance, a sudden emergency, feeling unable to cope, or lack of adequate housing;
- Temporary or permanent incapacity of the parents (through, for example, imprisonment, illness, unemployment, migration for work, disability);
- Medical treatment and other specialised care for a child (e.g. disability);
- Ensuring access to education and other basic services as well as food and other necessities;
- Exploitation and other forms of abuse and neglect.
- An unaccompanied asylum seeker



Length of time a Child can receive support

- A child who has been in the care of their local authority for more than 24 hours is known as a looked after child also often referred to as child in care.
- A child stops being looked after when they are adopted, return home (sometimes) or turn 18.
- Local authorities are required to support children leaving care at 18 until they are at least 25. This may involve them continuing to live with their foster family (up to age of 21) this is called 'Staying Put'

Most children in care say that their experiences are good and that it was the right choice for them (Biehal et al, 2014).



What is Parental Responsibility? Section 3(1) Children Act 89

All mothers and most fathers have legal rights and responsibilities as a parent - known as 'parental responsibility'.

Parental responsibility:

'is concerned with bringing the child up, caring for him and making decisions about him, but does not affect the relationship of parent and child for other purposes.

– Thus, whether or not a parent has PR does not affect any obligation towards the child, such as the statutory duty to maintain him



Parental Responsibility

When a child is taken into care because of a care order, the council will **share responsibility** for making most of the important decisions about the child's upbringing, including:

- who looks after them
- where they live
- how they are educated

If the parent agree to the child becoming 'looked after' and there is no care order, parents continue to have parental responsibility for the child.

In either case, the council is responsible for:

- making sure that an appropriate standard of care is provided
- making sure only suitable people are employed to look after the child
- providing proper training and support to staff and foster carers
- listening to the child's views and parents views about care arrangements and taking their religion, race, culture and background into account
- making sure the child has someone independent to talk to and knows how to complain if necessary

The child may be placed with either:

- another relative
- a foster carer
- a children's home

Full Care Orders (section 31)

A care order is given by a court. It allows a council to take a child into care. Under the [Children Act 1989](#) a council can apply for a care order if it believes a child is suffering or at risk of suffering significant harm.

The court decides if the child can be taken into care.

Care orders last until:

- the child's 18th birthday
- an order is made giving parental responsibility to another person - eg through adoption or special guardianship
- the court lifts the order (this is called 'discharging' the order)

Care Proceedings

The council can start 'care proceedings' if they're very worried about a child.

- They can apply for a 'care order' which means the council will have [parental responsibility for your child](#) and can determine where the child can live.
- They can apply for a 'placement order' as well if they believe that the child should be adopted. This allows the council to place the child with suitable adopters.

Interim care orders (ICO)

- At the start of care proceedings, the council asks the family court to make a temporary court order, called an 'interim care order'.
- If the court agrees, the council can take the child into care on a temporary basis. This can be for up to 8 weeks at first.

Process - Full Care Order

It can take up to 26 weeks for a court to decide what should happen to the child.

Some complex cases can take longer.

During this time a social worker, an officer from the Children and Family Court Advisory and Support Service (Cafcass) will be trying to understand the reasons why the child may be at risk.

They will also look at what can be done to keep them safe.

They will talk to the parents and the child.

They may talk to other family members or friends about looking after the child if they can't safely live at home.

The parents might also get support.

Reports

The social worker and Cafcass officer will each write a report for the court. These will outline what they think should happen to the child.

They will include whether they think the child should be taken into care or stay with the family.

Once all the information has been gathered, there will be a court hearing.

Going to Court

The judge will look at the reports, listen to everyone involved in the case, including:

- the child
- the parents
- solicitors representing parents and children
- the council social worker
- the Children and Family Court Advisory and Support Service (Cafcass) officer

The child will go back home if the judge decides that they're safe. If not, the council will find them a new home. That may be with:

- other members of their family
- friends
- a new family
- a children's home
- a foster carer

Accommodated – Section 20

- Parents still have “*parental responsibility*” and if the child is older than 16 they have the right to ask for the child to return home.
- However if the child is under 16 and in care, the law requires the social worker to make sure it’s safe for you to return home.
- The Social Worker will check how well the parents can look after the child (sometimes called doing an assessment/parent assessment).
- **Who decides if the child is longer to be accommodated?**
- If the child is 16 or 17 the decision about the child no longer being accommodated must be made by the Director of Children’s Services. They will make sure the child is happy with the plan.

Corporate Parenting Principles

From 1st April 2018, the law says local councils must think about the following whenever they are making decisions or doing things which affect children and young people in care and care leavers:

- The need to act in the best interests, and promote the physical and mental health and well-being, of children and young people.
- The need to encourage children and young people to express their views, wishes and feelings.
- The need to take into account the views, wishes and feelings of children and young people.
- The need to help children and young people benefit from services.
- The need to have high aspirations and to want the best for children and young people.
- The need for children and young people to be safe, and to have stability in their home lives, relationships and education or work.
- The need to prepare children and young people for adulthood and independent living.

Looked After Child Reviews

A looked-after child (LAC) review is a regular meeting that brings together those people who are closely concerned with the care of the child. It is an opportunity to:

- review the child's care plan – the document which sets out how the child will be cared for while they are looked after
- discuss the child's progress
- make plans for the future.

Timings:

The first review must be held four weeks after the child becomes a looked after child. If the child remains looked after, there must be a second review no more than three months after that.

Further reviews must be held at least every six months

Leaving Care Rights – General (Children Leaving Care Act 2000)

Leaving care doesn't mean the child loses care and support. That can last until they are 25 years old.

- Leaving care rights help make sure the young person gets the best start in their adult life.
- The law says every local council must publish a list of all of the advice, support and guidance available to care leavers in its area. This is called a '**local offer for care leavers**' However this could be seen as the young persons rights.
- Each council must consult "relevant persons" before publishing its local offer. This obviously includes children and young people in care and care leavers.

Looked After Child Review

Who will be at the review meeting – (it does not have to be a meeting! CYP Act 2008)

- the child, if they are old enough and understand what is going on
- parent and anyone else with parental responsibility (unless there is a specific reason why the parent can't attend)
- the child's social worker
- the child's foster carer or residential worker.
- Other people who know the child well may also be there.

In exceptional cases, parents and supporters of the child will not be allowed to attend the meeting. The Independent Reviewing Officer (IRO) and the child's social worker will make this decision together and explain the reasons why.

The meeting will be chaired by the Independent Reviewing Officer (IRO) who is an experienced social worker and independent of Children's Services.

Looked After Child Reviews

What happens at the review meeting

- Before the meeting the child's social worker and the Independent Reviewing Officer will discuss the child's care plan and progress with the child. The child may complete a booklet with their views
- The social worker will produce a report and bring it to the meeting.

At the meeting the main focus of discussion will be:

- the current day to day arrangements for the care of the child, including their health, education, emotional well being
- the plan for their long term care.
- The meeting should be child friendly and as relaxed as possible so the child feels comfortable and safe enough to contribute.

The Independent Reviewing Officer will complete a written report of the review meeting, recording the decisions that are made. Parents will receive copies of the IRO's report and the social worker's report.

At the end of the meeting, a date for the next review will be agreed.

Leaving Care Rights – Status dependent

The law splits care leavers into four different groups. The names given to the four different groups of young people are:

Eligible Child - Aged 16 or 17 and still in care

Relevant Child - Aged 16 or 17 and left care

Former Relevant child - Aged 18 to 25 years and left care

Qualifying care leaver - Aged 16 to 21 years

Eligible child

Still in care, living with foster carers/children's home, but are now also a care leaver.

It is important Children's Services support the child to live independently over the next few years.

They must:

Provide a Personal Advisor (sometimes called a PA)

- They are similar to Social Workers, but they work with older young people, supporting them to live independently, or to get ready to live independently.

Do a Needs Assessment – looks at Independence Skills

- This will decide if the child is ready to live on their own. -can they cook, wash own clothes and manage money, pay bills,
- They will also look at other things such as health, education and financial needs.

Make a Pathway Plan

- Once the Needs Assessment is complete, they will create a [Pathway Plan](#). This is a really important document and it is important that the child is part of deciding what goes in it.
- Must be invited to take part in the meetings to create the Pathway Plan

Other Rights:

- Right to stay in children's home or other place (for example, residential school) until 18.
- Can stay in foster care until 21. This is called 'Staying put'. It was introduced in recognition that many young adults continue to live with their families until their mid 20s.
- Some local councils are testing ways of giving similar support to young people living in children's homes. This is called 'Staying close'. (check whether your local authority offers this)

Relevant Child

A relevant child means that the child is 16 or 17 but left care on or after their 16th Birthday

Rights:

Even though not in care anymore Children's Services still legally have to support the child and must:

Provide a Personal Advisor (sometimes called a PA)

- They are similar to Social Workers, but they work with older young people, supporting them to live independently, or to get ready to live independently.

Do a Needs Assessment – looks at Independence Skills

- This will decide if the child is ready to live on their own. -can they cook, wash own clothes and manage money, pay bills,
- They will also look at other things such as health, education and financial needs.

Make a Pathway Plan

- Once the Needs Assessment is complete, they will create a **Pathway Plan**. This is a really important document and it is important that the child is part of deciding what goes in it.
- Must be invited to take part in the meetings to create the Pathway Plan

Former Relevant

Rights – Local Authority Must:

- Support offered until reach 25 years old.
- Provide a Personal Adviser (PA).
- Review the **Pathway Plan**. – Usually 6 monthly
- Help with money for work, education or training.
- Provide or pay for accommodation during college or university holidays if studying away from home.
- Contribute towards living expenses near to job, education or training.
- Provide a £2,000 grant if in higher education.
- Provide other financial support where necessary.
- Keep in touch
- Visit regularly.

Local Authority may:

- Consider making a contribution to post-graduate courses.
- Help to find financial support and resources to help undertake post graduate study.
- Expect the young person to claim benefits or apply for a student loan in same way as any other young person.

It is important that the **Pathway Plan** sets out the programme of education if aged over 21.

There is no set age for this support to end. What matters is when studies or training is finished.

Qualifying Child

- **Local Authority Must:**
- Provide advice and support.
- Keep in touch.
- Provide or pay for accommodation during college or university holidays, if studying full-time away from home, up to the age of 25.

- **Local Authority May:**
- Find the young person somewhere to live in exceptional circumstances.
- Support the young person by buying the items needed or, in exceptional circumstances, giving cash if needed for education or health.
- Provide a grant to pay for expenses related to education, training and work needs up to the age of 25.
- Contribute to living expenses related with education and training, up to the age of 25.

Any Questions

- Key Legislation
Slides 30 – 54
- Sources of Support
Slides 55 & 56



Any
Questions ??



Must/Should/May

Must – Legal Obligations – essential to follow – No exceptions

Should – Statutory Guidance – Exceptions to be documented and recorded including reasons – Advocates you can ask to see this

May/could/can – for those that it is not statutory guidance - Good Practice but exceptions permissible

- Applies to all children up to the age of 18 – Article 1
- Children's Rights are standards, freedoms and entitlements that all children are entitled to
- The articles are Split into 3 P's
 - Participation – The right to engage in activities
 - Provision – The right to access benefits, services or activities
 - Protection – The right to be protected against actions and behaviour

1989 - United Nations Convention on the Rights of the Child

UNCRC Cont.

Article 9

- States Parties shall ensure that a child shall not be separated from his or her parents against their will:
- Except when competent authorities determine it is in accordance with Law and Procedures and it is *necessary* for the **Best Interests** of the child
- Also see Article 20, 25, 37

- Section 22 (4) of The Children Act 1989, consistent with article 12 of the United Nations Convention on the Rights of the Child, provides that before making any decision with respect to a child who the local authority is looking after or proposing to look after, the authority must ascertain the wishes and feelings of the child. Section 22 (5) says that local authorities should give due consideration to those wishes and feelings.

1989 -
Children's
Act
The Child's
views
MUST be
Sought

Also : 1989 Children's Act

- Welfare of the Child is Paramount
- Child able to initiate proceedings
- Wide definition of harm, development, health and ill-treatment
- Statutory 'representation' procedure – later extended to Right to Advocacy (2002)
- Statutory Reviews of Care – Now includes independent scrutiny and challenge from IRO's

2000 - The Children Leaving Care Act

- Requires local authorities to improve the life chances of young people living in and leaving care and expects advocacy services to be accessible to all care leavers making or intending to make a complaint.
- This duty was implemented from April 2004 through the [Get it Sorted Regulations and Guidance](#).

Right to Advocacy

- **2002 The Adoption and Children Act** Placed a duty on local authorities to make arrangements for the provision of advocacy services for care leavers and other children using children's services who are making or intending to make a complaint under section 24D or section 26 of the Children Act 1989
- **The Advocacy Services and Representations Procedure (Children) (Amendment) Regulations 2004** sets out in more depth, the various requirements. This provision applies to children in care and those young people leaving care, up until 25 years old.

2005 - Mental Capacity Act

- Under the Mental Capacity Act; an independent advocate should be provided to those over 16 who lack the capacity to make their own decision about medical treatment or changes in their accommodation and have no friends or family to support them.
- They must undergo a capacity assessment which deems that they are unable to understand, remember and weigh up the pros and cons of choices, and communicate a decision. It is Decision and Time specific.

2006 Children's Complaints Procedure

- Children's Complaints regulations "Local Authority Social Services Department Children's Representation Procedure [England] Regulations" and the related guidance [Getting the Best from Complaints](#) came into force in September.

Mental health act does not have age limits, Young people entitled to IMHA if meet Qualifying Patient Eligibility, it is exactly the same.

However they do have extra safeguards if under 18:

Parental Consent to Informal Admission

- (a) A child with the relevant capacity can consent to informal admission, even if there is someone with parental responsibility.

- (b) A child with capacity who refuses cannot be admitted on the basis of parental consent.



2007 -
Mental
Health
Act

ECT s58A

- If under 18, detained or informal (not subject to CTO) and consents to ECT a SOAD MUST certify that consent and that it is appropriate for the treatment to be given.
- Where an informal child patient (not subject to a CTO) is not able of consent and there is authority to treat such a patient, the SOAD must certify that the patient is not capable of understanding the nature, purpose and likely effects of the treatment and that it is appropriate for the patient to receive the treatment.
- Before doing so, the SOAD **must** first consult two other persons - one must be a nurse concerned with the patient's medical treatment and the second must be another person professionally concerned with the patient's medical treatment who is neither a nurse nor a doctor.
- The person in charge of the patient's treatment is *excluded* from being a person the SOAD has a statutory duty to consult.

And 2007 Mental Health Act

2008 - Children and Young Peoples Act

- Increases the transparency and quality of care planning; ensures that the child's voice is heard in all decisions by strengthening the role of Independent Reviewing Officers;
- improves stability for children, by ensuring they are placed in the most appropriate placement;
- ensures young people (up to age 18) are not forced to move out of care before they are ready;
- provides more support for care leavers by extending the entitlement to a Personal Adviser to age 25 (for those who resume an education and training pathway);
- provides more support for care leavers by providing an entitlement to a bursary for those who go onto higher education;
- makes the role of the designated teacher statutory

DOL

Deprivation of Liberty and Children and Young People

Cases meeting the deprivation of liberty threshold involving a child under 16 or a young person 16/17 must be authorised either under:

- Children's Act Section 25 – secure accommodation – no lower limit
- Mental Health Act 1983 – no lower limit
- Mental Capacity Act (16+) via CoP 16/17
- Mental Capacity Act DoLA – 18+
- Parental Consent – no lower limit
- Inherent Jurisdiction – no lower limit

The first, [Re AB \(A child: deprivation of liberty\)](#), ruled that a local authority cannot consent to the deprivation of liberty of a child in its care.

The second, [Birmingham and D](#), ruled that parents are not able to consent to the deprivation of liberty of 16 or 17-year-olds. (2019)

Children's
Commissioner
Report
Who are they?
Where are they?
Nov 2020

- 19/20 327 children in England were Deprived of Liberty (DoL) through Inherent Jurisdiction (IJ)
- IJ is used when NO other legislation can be used to DoL

Please note – there are NO regulations or guidance that clearly sets out when and how the IJ should be used – however there is a practice direction for Lawyers 12D

Ref: PELT Peter Edwards Law

MCA?

- As with adults, decision-makers should assess the YP's capacity to consent to the proposed care or treatment
- If YP lacks capacity to consent within s 2(1) MCA because of an impairment of, or a disturbance in the functioning of, the mind or brain – MCA applies in the same way as it does to those who are 18 and over.
- If however they are unable to make the decision for some other reason – E.g. because they are overwhelmed by the implications of the decision,
- **MCA will not apply** to them and the legality of any treatment should be assessed under common law principles. ie
- Inherent jurisdiction
- Ref: PELT Peter Edwards Law

Inherent Jurisdiction Practice Direction 12D

It is the duty of the court under its IJ

- To ensure that a child who is the subject of proceedings is protected and properly taken care of.
- The court may, in exercising IJ, make any order or determine any issue in respect of a child unless limited by case law or statute.
- Case law establishes that such proceedings should only be commenced **exceptionally** where it is clear that the issues concerning the child should not be resolved under the Children Act 1989 – E.g. for reasons of urgency, of complexity or of the need for particular judicial expertise in the determination of a cross-border issue.

Ref: PELT Peter Edwards Law

Lancashire County Council v G [2020] EWHC 2828 (Fam)

- 16- girl was inappropriately placed on an adult mental health ward,
- No secure placement or regulated non-secure placement available in UK,
- Only placement was unregulated that was not prepared to apply to OFSTED for registration
- Alternative was discharge with nowhere to go and a very high risk of fatal self-harm.
- The judge authorised DoL at the unauthorised placement ‘Grave reservations about whether the court was really exercising its welfare jurisdiction or simply being forced by mere circumstance to make an order irrespective of welfare considerations’

Ref: PELT Peter Edwards Law

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

- A duty is placed on the Independent Reviewing Officer (IRO) to ensure that looked after children have been made aware of their right to bring proceedings under the Children Act 1989 (e.g. in relation to placements, contact with parents and siblings or discharge of a care order), their right to make a representation (including a complaint) and to access advocacy services.
- When a child wants to bring proceedings under the Children Act 1989, the IRO must support the child to seek legal advice, or identify another appropriate adult to support the child.

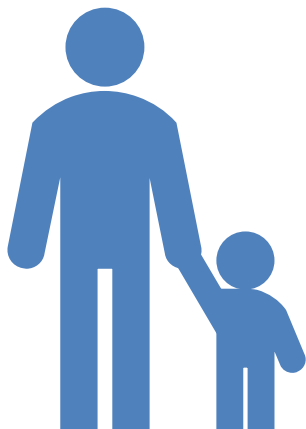
2012 Health and Social Care Act

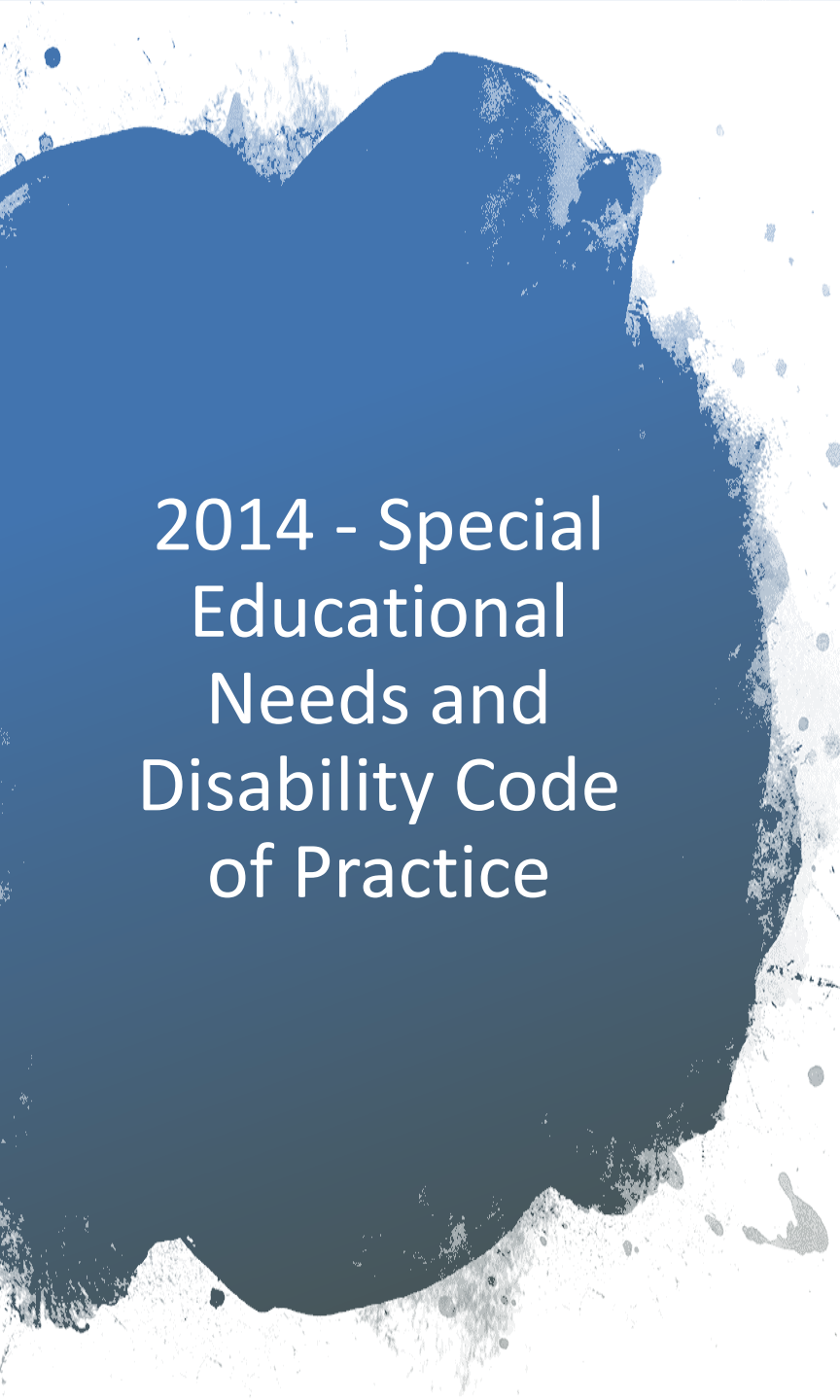
Children in receipt of health services who wish to make a complaint

- Children (and adults) in receipt of health services are entitled to access independent advocacy if they wish to make a complaint. The Act conferred a responsibility on Local Authorities to commission independent advocacy services for people in receipt of health services who wish to make a complaint. The entitlement to complaints advocacy is applicable to children and adults alike.

Children and Families Act 2014 in place to protect vulnerable children.

- Children in Care now have the choice to remain with their foster family until they reach the age of 21.
- Young Carers and Parent Carers rights regarding their support must now be made clearer.
- New reforms for residential care to ensure the homes are safe and secure and that vulnerable children receive good quality care.
- Legal duty for Schools to support SEN with Education Health and Care Plan;
- A young carer is a child under the age of 18 who helps to look after a family or friend who is disabled, ill or misuses alcohol or drugs.
- Care Proceedings – 26 weeks time frame - Public Law Outline





2014 - Special Educational Needs and Disability Code of Practice

- Requires local authorities to consider whether or not some young people with special educational needs and disabilities need support in expressing their views, and to provide advocacy where necessary.


Care Act 2014 – Young Carers

Young Carers are children under the age of 18 who have a Carers role.

- Local Authorities have a duty to identify all young carers and they must assess them to establish if they too have any support needs.
- Children should not be expected to undertake excessive caring roles that impact on their development and/or education.
- An assessment should look at the wishes of the young person and establish whether it is appropriate for them to be providing care.

2014 Care Act - Assessment

- Right to an assessment for Children who may continue to need care and support in adulthood have a statutory entitlement to advocacy.
- The local authority must also arrange independent advocacy services for children who are the subject of a (transition) needs assessment, who do not have anyone else independent and appropriate to assist



Care Act / Children and Families Act Interplay

- The two Acts have the same emphasis on outcomes, personalisation, and the integration of services.
- Both promote better choice and control over care and support for young people and families.

Care Act / Children and Families Act Interplay

- The Children and Families Act 2014 introduces a system of support which extends from birth to 25, while the Care Act provides support for young people going through the transition process which helps the young person to adulthood. This transition support works with young people between the ages of 14 - 25.
- The care act also provides support for young carers who are being assessed for their own needs as carers. This means there will be a group of young people aged 14-25 who will be entitled to support though both pieces of legislation.
- The Children and Families Act provides young people and families the right to request a personal budget as part of an EHC plan. The personal budget could be made up of SEN, social care and/or health funding depending on eligibility. The Care Act requires local authorities to include a personal budget in the Care and Support Plan (Care element of an EHC plan) for individuals over the age of 18.

CPD

- Children and Young People Now – weekly email
- NSPCC Caspar - <https://www.nspcc.org.uk>
- Community Care - <http://www.communitycare.co.uk/>
- **The Children's Commissioner**
<http://www.childrenscommissioner.gov.uk/> Help at hand – know your rights - <https://www.childrenscommissioner.gov.uk/help-at-hand/>
- Action For Children - <https://www.actionforchildren.org.uk>
- Coram - www.childrenslegalcentre.com
- Advice and Information on Children's Law - <https://childlawadvice.org.uk>
- Article 39 - Carlyne Willow - <https://article39.org.uk/> - fighting for rights for children in institutional care
- Children England
- [Children and Family Court Advisory and Support Service](#)

CPD Cont

- [Children's Society](#)
- [Fostering Network](#)
- [National Children's Bureau](#)
- [NSPCC](#)
- [Social Care Institute for Excellence](#)
- Become - <https://www.becomecharity.org.uk/> (was Who Cares Trust?)
- **CRIN – Children Rights Information Network**
<https://www.crin.org>
- **UNICEF** - <http://www.unicef.org.uk> Children's Rights and Responsibilities Leaflet
- **Catch 22** <http://www.catch-22.org.uk> Catch22's wide ranging provision delivers holistic support to looked after children and care leavers whilst in care and one they have left care to improve their life chances. We also run the National Leaving Care Benchmarking Forum, ensuring that we are at the forefront of best practice.
- **The Local Government Ombudsman**
<http://www.lgo.org.uk>
- Family Rights Group - www.frg.org.uk
- **Steve Broach** Barrister -
<http://www.monckton.com/barrister/steve-broach>
- Peter Edwards Law (PELT) <https://www.peteredwardslaw.com/>