

## IMPORTANT

- The information we provide on our rights4children website is for general guidance. It is not legal advice.
- If you need legal advice, please contact an independent advocate or a solicitor.
- Article 39 tries its best to make sure information is accurate and up-to-date. However, we cannot guarantee this. We'd appreciate you letting us know if you notice any errors or out-of-date information: [info@article39.org.uk](mailto:info@article39.org.uk)

## Leaving care

- + Leaving care doesn't mean you lose care and support. That can last until you are 25 years old.
- + The rights you have as a care leaver have built up over many years.
- + Leaving care rights help make sure you get the best start to your adult life.
- + Young people in the past didn't always get the support they should have done.
- + Your rights mean others have duties towards you.
- + 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' but we see it as your list of rights.<sup>1</sup> Your council must consult "relevant persons" before publishing its local offer.<sup>2</sup> This obviously includes children and young people in care and care leavers.



### 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.<sup>3</sup>

## Your rights – general

The law splits care leavers into four different groups. The first group hasn't left care at all – though young people this age have rights relating to leaving care. The names given to the four different groups of young people are tricky to remember. But we want you to have the facts, so here goes:

1. Aged 16 or 17 and still in care (you may be what's called an **eligible child**).
2. Aged 16 or 17 and left care (you may be what's called a **relevant child**).
3. Aged 18 to 25 years and left care (you may be what's called a **former relevant child**).
4. Aged 16 to 21 years (you may be what's called a **qualifying care leaver**).

### Aged 16 or 17 and still in care: your rights

The law says you are an **eligible child** if:

- + You are aged 16 or 17.
- + You are still in care.
- + Between the ages of 14 and 16, you spent at least 13 weeks in care. These 13 weeks could have been altogether or at separate times\*.<sup>4</sup>

*\*You cannot count time in planned placements that each lasted up to 4 weeks where afterwards you went back to live with a parent or other carer.*

#### If you are an eligible child

The first thing to remember is that all of the things that matter and are important to other 16 and 17 year-olds still apply to you – feeling loved and settled, being listened to, doing well in your education, having great friends and beginning to think about your future life as an adult.

- + **You have the right to stay in your children's home or other place (for example, residential school) until you are 18.**
- + You may have heard that young people can stay in foster care until they are 21. This is called 'Staying put'.<sup>5</sup> It was introduced in recognition that many young adults continue to live with their families until their mid 20s, or even older! We think young people living in children's homes should have the same right. That's not happened yet, though some local councils are testing ways of giving similar support to young people living in children's homes. This is called 'Staying close'. You could ask your social worker or independent reviewing officer whether 'Staying close' is happening where you live.

Here are another 6 important things about your rights:

### **1) Everyone must be clear about your needs**

From the age of 16, your council must assess your needs to decide what advice, help and support you should get now and after you have left your children's home.<sup>6</sup> This is all part of making sure you get the best help as you grow up and become more independent.

Your wishes and feelings must always be taken seriously when social workers and others are thinking about what you need.<sup>7</sup>

### **2) Your Pathway Plan**

A Pathway Plan will be written for you. Your social worker is responsible for doing this, in partnership with you and others who know you well.

Your Pathway Plan must say exactly what your needs are and how these needs will be met – see below. It must be kept under regular review so it is the best plan for you. You can ask for changes to be made to your Pathway Plan at any time. Your Care Plan will be included in your Pathway Plan.

Changes can be made to your Pathway Plan during your usual care reviews, or at other times.<sup>8</sup> Your independent reviewing officer will make sure these reviews happen.

Your Pathway Plan must include:

- + The name of your personal adviser (see below).
- + Who will support you, and how you will be supported.
- + Where you will live when you are no longer in a children's home.
- + Your education and training plans once you leave your children's home.
- + How your council will help you get into employment or training.
- + The support you'll get to help you with your family relationships and friendships.
- + The support you'll get to help you live independently.
- + The financial help you'll get to cover your housing and other costs like food.
- + Your health needs, and how these will be met when you no longer live at your children's home.
- + Your council's backup plans in case parts of this Plan don't work out for any reason.<sup>9</sup>

### **3) Your personal adviser**

You must be given a personal adviser from the age of 16.<sup>10</sup> This must be a skilled and knowledgeable person who can give you advice and help about all aspects of growing up. You have the right to a personal adviser up to the age of 25.

The law does not say what kind of qualifications or background personal advisers must have. However, advice to councils from the government says personal advisers must: understand the law (including the law relating to housing); appreciate what it is like for young people in and leaving care; and know how you communicate. You should get a say over who becomes your personal adviser.<sup>11</sup>

Having a personal adviser does not affect your right to regular visits from your social worker.

#### **4) Your social worker**

Social workers visit children in care to check you are happy, safe and being looked after well.

The law says how often every child in care must be visited.

Your social worker must visit you:

- + Within 1 week of you moving to live in a new place.
- + Then at least every 6 weeks.
- + Then every 6 weeks unless it has been agreed that you will live where you are until you are 18 in which case you must be visited at least once every 3 months.<sup>12</sup>

The law says your social worker must usually speak to you in private, unless you refuse this.<sup>13</sup> If your social worker finds that your welfare is not being protected, he or she should contact your independent reviewing officer<sup>14</sup> and a review of your needs and care must be carried out.<sup>15</sup>

#### **5) Your independent reviewing officer**

The law says independent reviewing officers must check your council is doing what it has agreed to do for you. Your independent reviewing officer must question and challenge your council if you are not getting the help you have a right to. He or she can contact a separate organisation called Cafcass to get help to make sure your rights are respected. Brilliant!

This is very important:

- + If you are under 18 and in care, and there is talk about you leaving care, a review must be carried out before you can leave care. Your independent reviewing officer must check that any move meets your needs and is the best thing for you.
- + If you are under 18 and in care, and there is talk about you moving into supported lodgings, a review must be carried out before you can leave care. Your independent reviewing officer must check that any move meets your needs and is the best thing for you.<sup>16</sup>

#### **6) Your independent advocate**

The law says you have the right to an independent advocate whenever you feel you need help to get your views across, including if you want to make a complaint. This right goes up to the age of 25 years for care leavers.<sup>17</sup>

## Aged 16 or 17 and no longer in care: your rights

The law says you are a **relevant child** if:

- + You are aged 16 or 17.
- + You are no longer in care.
- + Between the ages of 14 and 16, you spent at least 13 weeks in care. These 13 weeks could have been altogether or at separate times\*.<sup>18</sup>

OR

- + You are aged 16 or 17.
- + When you turned 16 you were in hospital, a young offender institution or a secure children's home.
- + You spent at least 13 weeks in care between the ages of 14 and 16. These 13 weeks could have been altogether or at separate times\*.<sup>19</sup>

*\*You cannot count time in planned placements that each lasted up to 4 weeks where afterwards you went back to live with a parent or other carer.*

If you are a relevant child, you have the right to lots of great help and support.

## Staying in touch

Your council must do its best to stay in touch with you.<sup>20</sup> If you haven't already got one, you must be given a personal adviser. You can have a personal adviser until the age of 25.

The law sets out the job of a personal adviser once you have left care. This is

- + To give you advice (including about practical things) and support.
- + To be involved in discussions about your Pathway Plan (though personal advisers **do not** write these).
- + To take part in any reviews of your Pathway Plan.
- + To link with your council about putting your pathway Plan into practice.
- + To link services up with you, and do their best to help you get the most from these services.
- + To keep up-to-date about how you are doing.
- + To keep a written record of their contact with you.<sup>21</sup>

If you are living in accommodation sorted by your council, your personal adviser must visit you in this accommodation:

- + Within 7 days of you getting the accommodation.
- + Then before your Pathway Plan is reviewed.
- + Then every 2 months.<sup>22</sup>

## **Pathway Plan**

The law says if you don't already have a Pathway Plan, your council must work out what your needs are and write a Pathway Plan. Your wishes and feelings will be a big part of this.

## **Somewhere to live and living costs**

Your council is under a duty to provide you with accommodation, or pay for your accommodation. This accommodation must be suitable for your needs, including any needs arising from your health or any disability you have.<sup>23</sup> Your council must look after your living costs.

## **Your education**

Your council has the power to give you money to help you in employment, education and training up until the age of 25.<sup>24</sup>

## **Other support**

Your independent reviewing officer from when you were in care may continue to be involved in your reviews.<sup>25</sup>

You still have the right to an independent advocate whenever you feel you need help to get your views across, including if you want to make a complaint. This right lasts until you are 25 years old.<sup>26</sup>

## You are now an adult but were in care from the age of 14

If you are an adult but **used to be** an eligible child or a relevant child, you have a lot of rights to help and support – up until the age of 25.

### Your rights:

- + The government encourages local councils to give, as a minimum, between £2,000 and £3,000 to young people leaving care to help you set up your own home.<sup>27</sup> This may sound like a lot of money but it's to cover all the essentials like furniture, bedding and kitchen equipment. Local councils are meant to review these allowances every year. This makes sense given the cost of things change year-on-year.
- + A growing number of local councils exempt care leavers from having to pay council tax up to the age of 25.
- + Your council must do its best to keep in touch with you.<sup>28</sup> It must contact you at least once every year to check how you are doing, and to ask if you need support.
- + You can have a personal adviser up until the age of 25.
- + Your Pathway Plan must be regularly reviewed (by your local council or someone independent).
- + You have the right to a higher education bursary if you go to university. The amount of this is currently set at £2,000.<sup>29</sup>
- + Your council must arrange somewhere for you to live during your holidays from university or your further education course (or give you enough money to sort accommodation out yourself). This applies if you are on a full-time course and need somewhere to stay during the holidays.<sup>30</sup>
- + Your independent reviewing officer from when you were in care may continue to be involved in your reviews.
- + You still have the right to an independent advocate whenever you feel you need help to get your views across, including if you want to make a complaint – up until the age of 25 years.<sup>31</sup>

## Qualifying care leavers

A person who is aged between 16 and 21 years and:

- + At any time from the age of 16 was in care.
- + A special guardianship order\* is in place for them (or was when they turned 18).

*\*A legal order giving a person parental responsibility for a child.*

OR

A person who is aged between 16 and 21 years and:

- + At any time from the age of 16 was in care and either lived with foster carers, or in a children's home, or was in hospital for 3 months.<sup>32</sup>

This is the fourth group of care leavers whom councils have duties towards.

### Your rights:

If you are a qualifying care leaver, the law says your council must look at the help and support you need.<sup>33</sup>

If your council finds that you do need help, it is under a duty to advise, befriend and assist you.<sup>34</sup>

This may include helping you with meeting the costs of your education, employment or training.<sup>35</sup> You may also get help with holiday accommodation if you are studying at university.<sup>36</sup>

You have the right an independent advocate if you need help getting your views heard, including if you want to make a complaint. This right lasts until you are 25 years old.<sup>37</sup>

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1 Section 2 Children and Social Work Act 2017.

2 Section 2(6) Children and Social Work Act 2017.

3 Section 1 Children and Social Work Act 2017.

4 Paragraph 19B of Schedule 2, Children Act 1989.

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- 5 Section 23CZA Children Act 1989 (as amended by the Children and Families Act 2014).
  - 6 Paragraph 19B of Schedule 2, Children Act 1989.
  - 7 Section 22(4) and 22(5), Children Act 1989.
  - 8 Paragraph 19B of Schedule 2, Children Act 1989.
  - 9 Schedule, The Children (Leaving Care) (England) Regulations 2001.
  - 10 Paragraph 19C of Schedule 2, Children Act 1989.
  - 11 Department for Education (2015) The Children Act 1989 guidance and regulations. Volume 3: planning transition to adulthood for care leavers.
  - 12 Regulation 28, The Care Planning, Placement and Case Review (England) Regulations 2010.
  - 13 Regulation 29, The Care Planning, Placement and Case Review (England) Regulations 2010.
  - 14 Department for Education (2015) The Children Act 1989 guidance and regulations. Volume 2: care planning, placement and case review.
  - 15 Regulation 30, The Care Planning, Placement and Case Review (England) Regulations 2010.
  - 16 Section 22D Children Act 1989; Department for Children, Schools and Families (2010) IRO Handbook. Statutory guidance for independent reviewing officers and local authorities on their functions in relation to case management and review for looked after children.
  - 17 Section 26A Children Act 1989.
  - 18 Section 23A(2) Children Act 1989.
  - 19 Regulation 3, The Care Leavers (England) Regulations 2010.
  - 20 Section 23B Children Act 1989.
  - 21 Regulation 8, The Care Leavers (England) Regulations 2010.
  - 22 Regulation 8 The Care Leavers (England) Regulations 2010.
  - 23 Regulation 9(2) The Care Leavers (England) Regulations 2010. See also Schedule 2 which sets out the matters that must be looked at when deciding the suitability of accommodation.
  - 24 Section 24B Children Act 1989.
  - 25 Department for Children, Schools and Families (2010) IRO Handbook. Statutory guidance for independent reviewing officers and local authorities on their functions in relation to case management and review for looked after children.
  - 26 Section 26A Children Act 1989.
  - 27 Department for Education (2015) The Children Act 1989 guidance and regulations. Volume 3: planning transition to adulthood for care leavers, page 79.
  - 28 Section 23C(2) Children Act 1989.
  - 29 Regulation 2, The Children Act 1989 (Higher Education Bursary)(England) Regulations 2009.
  - 30 Section 24B Children Act 1989.
  - 31 Section 26A Children Act 1989.
  - 32 Section 24 Children Act 1989.
  - 33 Section 24A Children Act 1989.
  - 34 Section 24A Children Act 1989.
  - 35 Section 24B Children Act 1989.
  - 36 Section 24B Children Act 1989.
  - 37 Section 26A Children Act 1989.