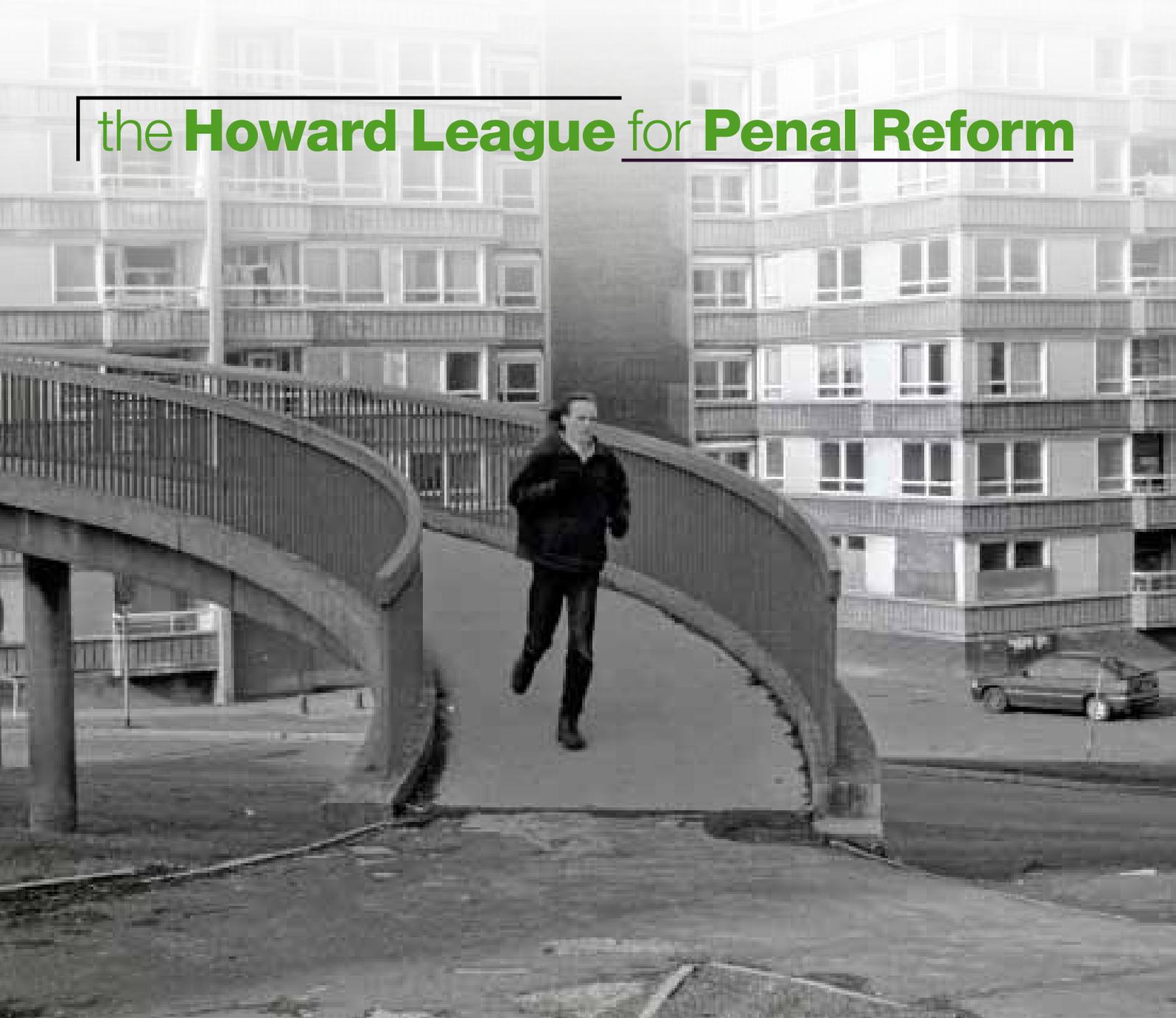


the **Howard League** for **Penal Reform**



## **Young, Adult and No Support**

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The entitlements of young adults  
to care in the community



# **YOUNG, ADULT AND NO SUPPORT:**

## **The entitlements of young adults to care in the community**

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## Foreword

Over the past decade more than 150,000 young adult males and 10,000 young females have been sentenced to prison and many thousands more have experienced prison whilst awaiting trial or sentence. We send huge numbers of our young people to custody and abandon them there in overcrowded and violent environments with little activity and no hope of help on release. The miracle is that only three-quarters of them commit further crimes when they walk free from the prison gates. If we were to design a system that was guaranteed to create more crime, exacerbate the problems of disaffected and bitter young people, and create more victims, this would be it.

The Howard League for Penal Reform ('Howard League') exists to work for a society with less crime, safer communities and fewer people in prison. We contend that these three objectives are linked and that achieving one supports the others. Our work over the past decade with young adults has helped to secure improved life chances for hundreds of individuals and contributed towards safer communities. In the long run we want to see fewer young adults sent to prison, as prison is the road to disaster.

Our work with young people in the penal system, at the most crucial period of maturing into adults, has been extremely depressing. Most of the individuals represented by our lawyers and caseworkers have life stories that would make you have nightmares; the stuff of horror movies. This is not to offer an excuse, but rather to suggest a way out of a cycle of crime and victimisation. We must do something sensible and effective to support young people into a life free from crime, both for their sakes and for ours.

The light at the end of the tunnel is that it is possible to find support for young people when agencies co-operate and invest resources appropriately. Most of the young people need complex support packages, exactly what we, as good parents, would offer to our children if they were in need. It is possible, and this book provides some of the answers to how, to achieve positive outcomes with even the most challenging young people.

I am proud to present this handbook to all professionals who work with young adults. They will find it provides detailed guidance that should help everyone to support some of the most troubled and troubling young people towards making a new life for themselves, a life that is free from crime, but much more than that. We want to see all our young people live healthily, safely, enjoyably and make a positive contribution to society

Frances Crook, Director The Howard League for Penal Reform

# YOUNG, ADULT AND NO SUPPORT:

## The entitlements of young adults to care in the community

### Introduction

Since 2002 the Howard League has provided a legal service to children in prison. In 2007 the Howard League expanded its service to provide the only dedicated legal service for young adults in prison. 'Young adults' are defined by the prison service as a prisoner between the ages of 18 and 20 years.

This report is produced by the Howard League's young adult legal team based on the experience and evidence from our casework. Our young adult team undertake groundbreaking work which begins to assert and clarify the rights and entitlements of this neglected and ignored group.

A considerable part of our work has focused on ensuring that there is an appropriate and detailed plan for the young person when she or he returns to the community. This transition is known as 'resettlement' and the right plan can be critical to obtaining release from custody and a safe return to the community.

This publication is intended to be a guide for any practitioners who work with vulnerable young adults. We hope that this will be a useful guide for people to understand the rights and entitlements of young adults and assist in enabling practitioners to promote access to suitable support for young adults.

The report is commissioned by the Barrow Cadbury Trust as part of the Transition to Adulthood ('T2A') Alliance<sup>1</sup>.

The T2A Alliance has been established by the Barrow Cadbury Trust<sup>2</sup>. The Alliance is a broad coalition of organisations and individuals working to improve the opportunities and life chances of young people in their transition to adulthood, who are at risk of committing crime and falling into the criminal justice system. The T2A Alliance aims to raise awareness of the problems this group faces and to secure policy change to improve their lives.

In 2004 the Howard League conducted a two-year in-depth research project based on interviews with 86 young adult males in prison and on release from prison. The report concluded:

*'Young adult male offenders have been a neglected and marginalized group, attracting neither significant research or policy attention. This is a major failing. Young adult men are at the peak age of offending, have one of the highest rates of re-offending, and are at a crucial moment in their personal development.'* (Out For Good, Howard League 2006, p.94)

The Howard League took forward the important conclusions from the report and launched the young adult legal service in April 2007. The Howard League has developed an expertise from its extensive casework focusing on the unmet legal need of young adults, especially when leaving custody<sup>3</sup>.

<sup>1</sup><http://www.t2a.org.uk/alliance>

<sup>2</sup><http://www.bctrust.org.uk>

<sup>3</sup> The young adult legal team also focuses on the young adults' rights and entitlements whilst serving a custodial sentence, including the rights for social service assistance whilst in custody.

The legal team provides an 'access to justice' service for children and young people, or those on their behalf, who contact the Howard League for help with potential legal problems. In the two-year period from 1 December 2008, the young adult team received over 130 calls regarding young adults in custody and on leaving custody. Over 30% of calls over the 12 months, 2008/9, sought legal advice on resettlement from custody. Without support, young adults may have remained in custody or been released to unsuitable or unsafe conditions.

The young adult team's work has unpicked the complex, and often misunderstood, entitlements of young adults to social services support, either as 'care leavers' through the Children Act 1989 or through adult social services support. With our expertise we have achieved improved outcomes for our young adult clients through negotiating with local authorities and, on occasions, threatening, or taking, legal action arguing that the local authorities' actions, or inactions, are unlawful or irrational. In chapter five we explain the procedures for ensuring that young adults have access to justice.

The team's legal case work has developed a body of evidence illustrating national unmet need for 'care leavers' and vulnerable young adults. Our work reveals a systemic lack of understanding amongst practitioners as to the entitlements of young adults to welfare and health services. Young adults, and those working alongside them, experience resistance and obstructions to getting support and a safe home, despite statutory requirements to meet the needs of young adults.

### **Young adults: why such a significant group?**

There were 9,543 young adults aged 18–20 years in custody in England and Wales<sup>4</sup> on 31 March 2009, which represents a 20% increase in the young adult prison population since 1997 (Devitt, Knighton and Lowe 2009, p.69). Nearly half (42%) of first time offenders are young adults (Social Exclusion Unit 2002) and reconviction rates for young adults are particularly high. In 2004, 75% of young men released from prison were reconvicted within two years of release.

The chief inspector of prisons<sup>5</sup>, in her annual report 2005/2006 (HM Chief Inspector of Prisons for England and Wales 2007), recognised the lack of suitable provision for this age group:

'Young adults remain a group whose needs have not been systematically addressed over the last five years, in spite of their evident needs and their high reoffending rates.' (p.39)

Regrettably, three years later her report on Chelmsford prison (3–7 August 2009) stated:

'Like most young adults in the prison system as a whole, they remain a forgotten population, whose considerable needs and potentials were not being identified or met.' (HM Chief Inspector of Prisons 2009, p.6)

In 2004/5 over half of those leaving young offender institutions (YOIs) had no recorded education, training or employment place and 13% left custody with no accommodation.<sup>6</sup> Causing serious concern, over half of young adults surveyed by the chief inspector of prisons said that they did not know where to get help to find accommodation, drug treatment or continuing education when they left prison (Social Exclusion Unit 2002).

<sup>4</sup>Ministry of Justice prison population monthly tables, March 2009, England and Wales – taken from Bromley Briefings (Prison Reform Trust 2009, p.4).

<sup>5</sup> Her Majesty's Inspectorate of Prisons is an independent body that inspects prisons and prepares 'inspection reports' which are accessible on their website at: <http://www.justice.gov.uk/inspectionreports/hmi-prisons/index.htm>

<sup>6</sup> Hansard, House of Commons written answers, 2 October 2006, col. 2664W.

These concerns remain in the recent chief inspector of prisons' annual report 2007/2008 (HM Chief Inspector of Prisons for England and Wales 2009):

'Their [young adults] specific needs are rarely catered for, or even assessed.' (p.64)

'There was little formal recognition or provision for [young adults], despite their disproportionate experience of bullying, use of force, ACCT<sup>7</sup> and adjudications. The needs of younger prisoners were overlooked, and the establishment needed to consider them more actively in its strategies.' (p.64)

There is little improvement in her final report (Annual Report 2008-9) where she summarises:

'Overall, this is still a neglected and under-resourced age-group. Busy and overcrowded local prisons struggle to deal with their specific needs, and even specialist young offender institutions lack the resources, support and training to do so. The high rate of reoffending among young adult men is unlikely to reduce without significant changes in approach, funding and focus.'

Our work and research published in the report *Out for Good* (Howard League 2006), demonstrated the necessity for services above and beyond mere practical assistance to break the cycle of reoffending for young adult males. It is essential that interventions take into account the complex social, economic and emotional issues that lead to offending behaviour. To prevent offending, stable and secure accommodation and positive long-term relationships with social workers and personal advisors are key.

The green paper, *Care Matters: Transforming the Lives of Children and Young People in Care* notes: 'few young people ever really 'leave' the care of their parents. They may leave home and on average do so at the age of 24, but they know that their families are only ever a phone call away and stand ready to offer financial support and advice or a place to stay if they need it' (Department for Education and Skills 2006, para. 7.2).

The Howard League's young adult legal service demonstrates that while there are statutory duties and guidance entitling young adults to suitable accommodation and support, there is also a national failure to meet these needs. While there is a 'safety net' for young adults it is not functioning properly. We have found that legal intervention can ensure that young adult client's needs are met and that the safety net can work – changing lives, making safer communities and reducing reoffending.

It is important to note that the majority of our work is with prisoners who have been sentenced. Remand prisoners are in a very different position and the unmet need for suitable accommodation and support in the community is more stark. This report does not address this problem in detail; however those working with young adults remanded into custody should consider their needs and take the action described in this report.

## **Outline of this publication**

The next three chapters will consider the legal position for young adults gaining access to social services support and housing. Chapter two reviews the entitlements of young adults to social services support under the Children Act 1989 due to previous involvement with social services as a child. Chapter three considers the entitlements of young adults to accommodation and support from adult social services due to their current need and not dependent on previous assistance from social services. Chapter four briefly considers the housing entitlements of homeless young adults. Chapter five outlines the procedures for young adults to access and enforce their entitlements to social services support and how to seek redress where things have gone wrong. Finally, the conclusion considers the areas of weaknesses and proposes recommendations to improve the position of young adults accessing suitable support and assistance.

<sup>7</sup>'ACCT' – 'Assessment, Care in Custody, and Teamwork'. This is a 'care plan' for prisoners at risk of harming themselves. The plan is meant to encourage staff to work together to provide individual care to prisoners in distress, to help defuse a potentially suicidal crisis or to help individuals with long-term needs (such as those with a pattern of repetitive self-injury) to better manage and reduce their distress.

**GLOSSARY OF TERMS:**

**Adult Social Services** – the social services department responsible for providing the support needed by vulnerable adults;

**Care leaver** – 16 – 21 year olds who have been in care for 13 weeks or more between the ages of 14 and 18 and are entitled to ongoing support and assistance from the local authority under the Children Act 1989 in order to safeguard their welfare;

**Children's Social Services** - the department within social services that provides the support needed to safeguard the welfare of children and care leavers over 18 years old under the Children Act 1989;

**Community Care services** – services provided by adult social services departments;

**European Convention of Human Rights** – this is an international legal agreement to protect human rights and fundamental freedoms. All 47 member states of the Council of Europe have signed up to it. These rights and freedoms are set out in a list of 18 'articles'. The Convention also established a European Court of Human Rights which hears cases from individuals in the member states who consider any of their rights have been violated. The decisions of the court and the rights and freedoms set out in the convention become the law in the member states without the need for separate legislation to be passed in each state;

**Housing authority/department** – the section within a local authority responsible for social housing in that area;

**The Human Rights Act 1998** is a UK law which makes it unlawful for any public body in England and Wales to act in a way which goes against the European Convention of Human Rights;

**Judicial review** – legal proceedings that can be taken to challenge the decision-making of public bodies in certain circumstances;

**Local authority** – Better known as councils: a public body that is responsible for all the public services and facilities in a particular area, including social services and housing functions;

**Local Authority Circular** – are instructions, directions and guidance of lasting importance to local authorities. They normally require action by local authorities. They are issued by central government bodies, for example the Department for Health;

**Primary Care Trust (PCT)** – a PCT is the responsible body for health care in your area. Primary care is the first port of call when you first have a health problem, for example GPs, walk-in health centres, dentists and opticians;

**Prison Service Orders (PSOs)** - guidance issued by the Prison Service, addressing all aspects of governance, function and management of prisons. PSOs provide mandatory instructions and long-term policy guidance<sup>1</sup>

**Probation Service** – Officially called the National Probation Service for England and Wales, the purpose is to supervise and rehabilitate people convicted of crimes in order to protect the public. The National Offender Management Service aims to reduce reoffending through consistent and effective offender management. In practice this means probation officers or offender supervisors will supervise people on release

<sup>1</sup> Currently there are two schemes for policy and guidance for the Prison Service, PSOs and Prison Service Instructions (PSIs). From 1st August 2009 all new guidance will be issued as a PSI in accordance with PSI23/2009 to governors and prison staff;

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from custody on licence conditions and those sentenced to community orders. The Secretary of State for Justice has the ultimate responsibility for the powers exercised by the probation service, eg the power to revoke a licence and recall to prison;

**Public body/authority** – carries out functions in the public interest and is funded by public funds, i.e the tax payer , eg government departments, local authorities, police, prison service. All public bodies must carry out their duties according to the laws made by parliament;

**Resettlement** – term used to describe the transition from custody into the community and what support will be in place for the person leaving custody;

**‘Social housing’** – an umbrella term for rental housing which may be owned and managed by the government, by not for profit organisations, eg a housing association, or by a combination of the two. The aim of social housing is to provide affordable housing;

**Social services departments** – the department within every local authority, providing support and assistance to vulnerable people, including children’s services and adult services;

**Supported accommodation** – accommodation with access to a team of workers to help with practical tasks and emotional support, either on the same site as the accommodation or support provided alongside the accommodation, ‘floating support’;

**‘Vulnerable adults’** – term used for those adults who need help and support in the day to day functioning of their lives. The help provided to people who meet the criteria comes from social services;

**Young Adult Prisoner**- 18 to 20 year olds in the prison estate. This age group is significant because although they are young and share many of the difficulties faced by children (under 18s) they are not protected by law as children. Once a prisoner turns 21 they enter the adult prison estate and are categorised and allocated accordingly;

**Young Offender Institutions(YOI)** – custodial establishments for under 21 year olds. Some YOIs hold only children under 18 sentenced to custody. Most 18 – 21 year olds sentenced to custody will be held in a YOI;

**Youth Offending Teams (YOT)** – multiagency teams created by the Crime and Disorder Act 1998 and based within each local authorities which provide supervision and other services to children (and some young adults) when at risk or involved in offending. They perform a similar function as the Probation Service for young adults.

# 'Care leavers' – who is a care leaver and what are they entitled to?

## Executive Summary

This chapter will outline the support that is available for young adults from children's services as a 'care leaver' and will look at the following:

- How does a young person work out whether they are a 'care leaver' and what to do if it is unclear?
- If the young person is a 'care leaver', what should they expect from their local authority?
- The importance of a carefully prepared pathway assessment of needs and a pathway plan.
- What do the leaving care regulations require from the needs assessment, pathway plan and the role of the personal adviser?
- Are the leaving care regulations 'fit for purpose' and how could they be improved?

## Introduction

This chapter examines the entitlements for 18 to 20-year-olds who have a care history illustrated by case studies taken directly from our casework. We show that the care status is critical in determining the type of support they are entitled to in the transition to adulthood.

The Children (Leaving Care) Act 2000 (the 'Act') extended the support provided by children's social services to certain 18 to 20-year-olds and was intended to ease the transition for children leaving care into independent living. Leaving care assistance should begin while the child is still being 'looked after' to ensure a seamless transition. Statutory leaving care assistance was introduced without additional funding despite the fact that services under the Act can range from advice and assistance to the continued provision of accommodation up to the age of 21 years, or 24 years if the person is in full-time education.

The rules for eligibility for leaving care assistance under the Act are rather technical and can cause confusion. Many of the children and young people represented by the Howard League are either eligible for leaving care assistance or should be eligible, but are technically not eligible because of previous failures on the part of local authorities.

## Who is a 'care leaver'?

The legal criteria for defining a 'care leaver' are based upon the amount of time a young person has spent 'in care' as a child and when that time occurred. Finding out whether a young person is a 'care leaver' requires a detailed understanding of their past. This exercise is made more confusing by the existence of different routes by which children enter the care system. Despite the legal and factual complexities it is essential to establish the correct legal status as this determines the type of service to which the young person is entitled.

Children may find themselves 'in care' through three distinct routes. Sometimes local authorities' departments and other agencies overlook periods of care especially those when placed in care through the criminal justice route. When trying to establish a young person's care history it is worth drafting a 'chronology' of life events to make sure that all possible care episodes are identified.

The main routes into local authority care are described as follows:

The 'welfare route'

**A care order (s.31 Children Act 1989)** – this is where a local authority has obtained parental responsibility for the child by order of a court following care proceedings. As long as the order is not discharged before the child's 16th birthday, children subject to care orders will be 'care leavers' once they have reached 16 years.

**Voluntarily accommodated (s.20 Children Act 1989)** – this is where a child is provided with accommodation and support by the local authority without an order of a court.

Martin is 18 years old. He had an extremely disruptive childhood involving constant moves to women's refuges with his mother in attempts to escape his abusive step-father. At the age of 13 years, after fleeing from his step-father one last time, Martin's mother moved into a refuge that refused to accommodate Martin as well. This refuge would not accommodate teenage boys. Social services provided Martin with s.20 accommodation as his mother was unable to look after him in these circumstances and both Martin and his mother agreed that s.20 accommodation was the best way forward. Martin was placed with foster carers.

The 'criminal justice route'

**Bailed to reside with the local authority** – where a child is before a court in criminal proceedings and is bailed to 'live as directed by the local authority'. This period should be treated as 'in the care' of the local authority.

**Remanded to the care of the local authority (non-secure)** – where a child is remanded for a criminal offence by a criminal court under s.23 Children and Young Persons Act 1969 to live as directed by the local authority. The court has placed the child 'in care' and to be treated as 'looked after'.

**Remanded to the care of the local authority (secure)** - where a child is remanded for a criminal offence by a criminal court under s.23 Children and Young Persons Act 1969 to live in a local authority provided secure children's home or a privately operated secure training centre. The court has placed the child 'in care' and to be treated as 'looked after'.

Dana had been serving a five-year sentence since the age of 16 years. She was a 'care leaver' on account of the 13 weeks or more she spent at a secure training centre on remand. Although her parole hearing was approaching, the local authority had done almost nothing to assess, plan or appoint a personal adviser as required by law. As a result, she would have been considered for parole without any support or suitable accommodation in the community. We threatened judicial review proceedings against her local authority, who conceded that they owed her the full range of leaving care rights and appointed a social worker, a personal adviser and identified supported accommodation for her release. At the parole hearing the parole panel commented on the rarity of such a comprehensive package of support offered to her by the local authority in preparation for her release. Dana was released on parole to supported accommodation and an intense package of round-the-clock support in time to begin a course of further educational study which she had been working towards for three years. If it had not been for the provision of the leaving care support and in particular the accommodation, Dana would have been allocated to a women's probation hostel, which the parole board was likely to consider unsuitable for such a young and vulnerable woman, resulting in the refusal of her parole.

The 'retrospective route'

This route is more complex and is likely to require legal advice. Our legal work reveals that local authorities find ways to provide accommodation and services to children which mean that the child does not acquire 'leaving care' entitlements. The good news is that there are ways of correcting the mistakes made during childhood to secure leaving care entitlements. Legal advice is usually required as local authorities may struggle to accept their error without some persuasion.

There are two main types of errors made by local authorities:

**Previous accommodation under s.17 Children Act 1989 as a 'child in need'**

Some local authorities believe that they can accommodate children under s.17 Children Act 1989 which means the child is not 'looked after' and does not receive the full entitlements of a child in care.

Martin (see above) eventually returned to live with his mother after she had settled into suitable accommodation. However, their relationship was very strained and they struggled to live together. At the age of 16 years, Martin's mother evicted him and he was provided with bed and breakfast accommodation until he went into custody, aged 17 years. Social services are now trying to argue that the accommodation provided was s.17 and therefore, at the age of 18 years, Martin is not entitled to support from them. We are representing Martin to ensure that he obtains the support that he needs and is entitled to.

**Previous accommodation under the Housing Act 1996** – Some local authorities when approached by 16 and 17-year-old children will direct them to the relevant housing department for accommodation. The child is then accommodated under the homelessness provisions and does not receive the full entitlements of a child in care.

In both scenarios the child does not accrue 'looked after' time and will not acquire leaving care entitlements. It is possible nonetheless to argue that the local authority had made a mistake at the time the child asked for help and therefore the young person should be provided with leaving care entitlements. The cases of R(L) v. Nottinghamshire County Council [2007] EWHC 2364 (Admin) and R(G) v. Southwark [2009] UKHL, confirm that the courts are entitled to correct an error by the local authority retrospectively.

In the case of R(L) v. Nottinghamshire County Council [2007] the court was asked to rule on whether an 18-year-old was entitled to be retrospectively designated a former relevant child due to the earlier error by the local authority to identify the applicant as a 'looked after' child. It found that she should have been 'looked after' at the relevant time and that she was now treated as a care leaver.

Once it is established how long the young person has or may have spent in care it is then possible to determine the legal status of the 'care leaver'. There are four types of 'care leaver' as follows:

**'The eligible child'**<sup>1</sup> – a child is eligible if aged 16–17 years and has been 'looked after' by a local authority for a period of 13 weeks or more, provided the period began after the child reached 14 years of age and ended after reaching the age of 16 years. The 13 weeks does not need to have been continuous, but a series of pre-planned short-term placements of under four weeks at the end of which the child returned to the care of a parent or a person who had responsibility for him or her will not count. Periods spent remanded into the care of the local authority or on remand to a secure children's home or a secure training centre will count. It can be difficult to determine whether or not a child is eligible and may require considerable investigation.

<sup>1</sup>Section 19B(2), Children Act 1989, as amended by the Children (Leaving Care) Act 2000.

**‘The relevant child’<sup>2</sup>** – A child is ‘relevant’ if he or she is aged 16 or 17 years and is not currently being ‘looked after’ by a local authority, but was, before last ceasing to be ‘looked after’, an eligible child.

**‘The former relevant child’<sup>3</sup>** – Former relevant children are young people aged 18–20 years who have been either eligible children or relevant children. A young person aged over 21 years who is still receiving support from a local authority with education or training will be a former relevant child until the end of his or her programme of study.<sup>4</sup>

**‘The qualifying child’** – A child who was in care but not for more than 13 weeks. The authority merely has to ‘keep in touch’ and provide advice and assistance. There are no requirements to provide any services, appoint workers or undertake assessments or plans.

## **What duties are owed to ‘care leavers’?**

Having established that a young person is a ‘care leaver’, what services should they expect?

### **‘The eligible child’**

Once a child is determined to be eligible, the local authority must carry out an assessment of his or her needs to work out what advice, assistance and support is required while the child is being ‘looked after’, and after leaving care. Under the Children (Leaving Care) (England) Regulations 2001 (the ‘Regulations’), a pathway needs assessment must be undertaken not more than three months after the date on which he or she reaches the age of 16 years or becomes an eligible child after that age.

The needs assessment will be the basis for the pathway plan which must be completed as soon as possible after the assessment. The pathway plan must be kept under regular review.

The Regulations set out the requirements for pathway plans. The Regulations confirm that the pathway plan must set out the needs of the child and the manner in which the local authority will meet the needs of the child. The plan should specify the date by which, and by whom, any action required to implement any aspect of the plan will be carried out. The plan should be drawn up by social services in consultation with the child or young person.

A personal adviser should be appointed to advise and support the child or young person and liaise with the local authority. The adviser performs a type of advocacy role to ensure that the young person’s needs are met and understood by the authority.

The Howard League has found that in many instances children are not allocated a separate personal adviser, or that a social worker acts as the personal adviser, or that once a personal adviser has been allocated, social services tend to fall out of the picture. These scenarios are unlawful.

In the case of *R(J) v. Caerphilly County Borough Council* [2005] 2 FLR 860 (the ‘Caerphilly case’), the judge highlighted the importance of the personal adviser’s role and the fact that it is fundamentally different from the role of a social worker:

‘Part of the personal adviser’s role is, in a sense, to be the advocate or representative of the child in the course of the child’s dealings with the local authority. As the Children Leaving Care Act Guidance puts it, the personal adviser plays a “negotiating role on behalf of the child”. He is, in a sense, a “go-between” between the child and the local authority. His vital role and function are apt to be compromised if he is, at one and the same time, both the author of the local authority’s pathway plan and the person charged with important duties owed to the child in respect of its preparation and implementation.’

<sup>2</sup>Section 23A(2), *Children Act 1989*, as amended by the *Children (Leaving Care) Act 2000*.

<sup>3</sup>Section 23C, *Children Act 1989*, as amended by the *Children (Leaving Care) Act 2000*.

<sup>4</sup>Section 23C(7), *Children Act 1989*, as amended by the *Children (Leaving Care) Act 2000*.

**‘The relevant child’**

If a child is ‘relevant’, the local authority must take reasonable steps to keep in touch, appoint a personal adviser, prepare and carry out a pathway assessment of needs and plan. The authority is required to safeguard and promote the child’s welfare and provide support by maintaining him or her in suitable accommodation, unless satisfied that his or her welfare does not require it. This last duty is particularly relevant to children leaving custody, as they will frequently require the provision of accommodation to ensure their welfare is safeguarded.

**‘The former relevant child’**

For a ‘former relevant child’ the local authority must take reasonable steps to keep in touch, continue the appointment of a personal adviser and keep the pathway plan under regular review and give a child assistance to the extent that their welfare and education or training needs require it.

Although there is no specific reference to a duty to accommodate a former relevant child, it is strongly arguable that the assistance required to safeguard the former relevant child’s welfare could well include the provision of accommodation. This proposition is reinforced by s.20(5) Children Act 1989 which provides the power for a local authority to accommodate a person in a community home up to the age of 21 years should their welfare needs require it.

In a number of cases The Howard League successfully argued that social services owed former relevant children accommodation due to their high welfare needs. The type of accommodation needed is often highly specialised including therapeutic placements.

**‘Qualifying children’ - young people who have been ‘looked after’ but not for 13 weeks<sup>5</sup>**

Young people who have been ‘looked after’ in the past but not for 13 weeks can still be entitled to advice and assistance if they are aged under 21 years and were ‘looked after’ for at least one day after the age of 16 years and before the age of 18 years. Young people who qualify under this section are entitled to advice, assistance and ‘befriending’ from the local authority. They are not entitled to a pathway assessment of needs or pathway plan.

The advice and assistance can be cash<sup>6</sup> including a financial contribution to assist the young person seeking employment, education or training. This can be extended until the young person is 24 years old.<sup>7</sup>

**Forgotten children**

As referred to above, it is not unusual to find that some young people are, as a matter of law, entitled to leaving care services which are not recognised by authorities. As illustrated, this occurs when children have been remanded to either a local authority secure children’s home or a secure training centre for a period of 13 weeks or more which includes a date on or after the child’s 16th birthday.

Another scenario is where children would have been former relevant children but are detained in hospital or custody before they would have spent the necessary time ‘in care’ to acquire leaving care entitlements. Regulation 4 of the Regulations provides that such young people will be treated as ‘relevant children’ or ‘former relevant children’.

<sup>5</sup>Section 24, Children Act 1989, as amended by the Children (Leaving Care) Act 2000.

<sup>6</sup>Section 24A, Children Act 1989, as amended by the Children (Leaving Care) Act 2000.

<sup>7</sup>Section 24B, Children Act 1989, as amended by the Children (Leaving Care) Act 2000.

## **The gateway to services: the pathway assessment of needs and pathway plan**

When a child and young person is 'in care' the local authority is taking the role of the parent, sometimes referred to as the 'corporate parent'. The task of a parent is a daunting challenge and incurs enormous responsibility. A parent is expected to meet the needs of their child, safeguarding their welfare and ensuring their development while imposing appropriate boundaries. This task needs a relationship of trust, understanding and 'love' which is a difficult and complex job for the 'corporate parent'.

The statutory guidance places the needs assessment and care plan at the heart of high-quality social services. The law requires that authorities produce a detailed assessment of the young person's needs with a care plan that addresses those needs with identified services. A good plan will say how and when those services will be obtained and who will have responsibility for getting those services. Finally, the journey in completing the needs assessment and care plan will have the young person at the centre supported by his or her personal adviser. A failure to undertake this exercise in an energetic and honest way will undermine the purpose of the provision of care services.

The Regulations are very specific with regard to what is expected from the authority. The local authority is expected to have regard to the views of the young person in question and seek to enable them to attend and participate in any meetings relating to them.<sup>8</sup> It must also provide copies of the assessment and plan, and explain the contents of the documents to the young person.<sup>9</sup>

The Regulations require the authority, when preparing the pathway plan, to ensure a comprehensive and detailed review of the young person's needs and exactly what services will be provided to address those needs. The Regulations do not anticipate a perfunctory task requiring boxes to be ticked. The pathway plan is an 'operational' plan from which the reader will obtain a clear understanding of how the needs of the young person will be met. The Regulations require the following matters to be addressed in detail:

- 1 The nature and level of personal support to be provided to the child or young person.
- 2 Details of the accommodation the child or young person is to occupy.
- 3 A detailed plan for his or her education or training.
- 4 Where relevant, how the responsible local authority will assist the child or young person in employment or seeking employment.
- 5 The support to be provided to enable the child or young person to develop and sustain appropriate family and social relationships.
- 6 A programme to develop the practical and other skills necessary for him or her to live independently.
- 7 The financial support to be provided to the child or young person, in particular where it is to be provided to meet his or her accommodation and maintenance needs.
- 8 The health needs, including any mental health needs, of the child or young person, and how they are to be met.
- 9 Contingency plans for action to be taken by the responsible local authority should the pathway plan for any reason cease to be effective.

<sup>8</sup> 2001 Regulations, para. 1

<sup>9</sup> 2001 Regulations, para. 2.

It is worth emphasising the importance of the last requirement which requires authorities to ensure 'contingency' plans are in place within the pathway plan, i.e., what happens when things go wrong. It is anticipated that things do not always go right first time and therefore flags up the need to think about a 'plan B'. A good pathway plan will enable the young person to be reassured that there are other options in place.

Julian was a very vulnerable 19-year-old. He had been placed in a number of unsuitable beds and breakfasts where he struggled to live independently. Eventually he was found 'intentionally homeless' and was unable to access accommodation through the homelessness route. The Howard League took action against social services and the court ordered social services to provide Julian with accommodation. Eventually social services agreed that Julian was a 'former relevant child' and prepared an assessment of needs and pathway plan. The contingency plan for Julian if he lost his current accommodation was for Julian to apply for housing from the housing authority, something which was clearly unsuitable in light of his previous experiences and an 'intentionally homeless' decision. On making representations to social services, they agreed to amend the assessment of needs and pathway plan.

Our legal work evidences that authorities regularly do not complete needs assessments or pathway plans or that when completed they are wholly inadequate, and therefore unlawful.

The importance of the pathway plan was considered in the Caerphilly case, brought by the Howard League. At paragraph 46 of that judgment, Mr Justice Munby emphasised the importance of a pathway plan being meaningful:

'A care plan is – or ought to be – a detailed operational plan. Just how detailed will depend upon the circumstances of the particular case. Sometimes a very high level of detail will be essential. But whatever the level of detail which the individual case may call for, any care plan worth its name ought to set out the operational objectives with sufficient detail – including detail of the "how, who, what and when" – to enable the care plan itself to be used as a means of checking whether or not those objectives are being met. Nothing less is called for in a pathway plan. Indeed, the Regulations, as we have seen, mandate a high level of detail.'

In the case of *R(G) v. Nottingham City Council and Nottingham University Trust Hospitals* [2008] EWHC 400 (Admin), the court reaffirmed the point that a lawful and meaningful needs assessment is something that 'goes beyond mere identification of needs' and 'involves analysis and evaluation of the nature, extent and severity of the child's needs, a process which must go far enough to enable a pathway plan to be prepared setting out in sufficiently precise detail the "manner in which" those needs are to be met.'

Often local authorities complain that incomplete needs assessments and pathway plans are as a result of the failure of the young person to 'engage' with the authority. The Caerphilly case addresses the issue of the 'unco-operative child' where the court observed:

'[t]he fact that a child is uncooperative and unwilling to engage, or even refuses to engage, is no reason for the local authority not to carry out its obligations under the Act and the Regulations. After all, a disturbed child's unwillingness to engage with those who are trying to help is often merely a part of the overall problems which justified the local authority's statutory intervention in the first place. The local authority must do its best.'

The Regulations acknowledge that the needs and circumstances of young people can change. Once the needs assessment and pathway plan are completed there are

opportunities for the young person and the personal adviser to 'review' the plan. This is necessary to ensure the current 'needs' and required 'services' are in place. Reviews must take place at intervals of no more than six months.<sup>10</sup>

The personal adviser has a pivotal role in the day-to-day life of the 'care leaver', ensuring that the corporate parent maintains the young person at the centre of its services. The personal adviser has been described as a 'go-between' between the child and the local authority and is meant to advocate on behalf of the child, potentially against a decision by social services to reduce services or something similar. Good practice would ensure that the personal adviser is from another statutory or voluntary organisation giving the adviser the independence and clout to advocate independently from the local authority.

The Regulations describes the personal adviser's role in the preparation of the assessment and pathway plan. It states that:

'the personal adviser is likely to play a negotiating role on behalf of the child or young person, ensuring that the plan is realistic and deliverable whilst meeting assessed needs. Whilst there is an element of advocacy in this, it would be wrong to construe the role primarily as that of an advocate.'

The Regulations also attempt to enable the young person to avoid resource battles and state that:

'In order to avoid setting up conflicts of interest, the personal adviser should not also be the budget-holder.'

The Regulations explain the way that assessments and pathway plans are to be prepared and what they should contain:

'The needs assessment to inform the Pathway Plan should be based on the three domains within the Framework for the Assessment of Children in Need and their Families ... the starting point for assessing the young person's developmental needs should be as set out in the Looking After Children System. The Assessment and Action Records should provide a comprehensive picture of the child's developmental needs and the agreed actions to address these.'

The Regulations, at paragraph 7.2, identify the pathway plan as 'pivotal to the process whereby children and young people map out their future'. Paragraph 7.7 says that:

'The Pathway Plan should be explicit in setting out the objectives and actions needed to achieve these; this should include who is responsible for achieving each action and time-scale for achieving it.'

## **Young people in custody**

The Children Act 1989 does not stop applying to children and young people in custody. Children and young people are still entitled to pathway assessments of needs and pathway plans detailing the assistance they will get whilst in custody.

Young people will require financial assistance whilst in custody to ensure that they are able to contact their friends, families and other professionals. It is not uncommon for social services to provide extra financial assistance to cover these costs as well as extra clothing and shoes.

The pathway assessment of needs and pathway plan must look to the future. An important aspect of care planning will be to ensure that there is suitable accommodation and support ready for the young person's release from custody, in advance of release. This is even more important where the young person will be applying for early release from custody.

Danny is a former relevant child in custody. He was not receiving support from social services whilst in custody, or help with planning for his release. After representations on Danny's behalf by The Howard League, social services paid Danny money each month to contribute to the cost of phone calls, sent Danny envelopes and stamps and provided him with a clothing allowance. They also helped ensure that Danny had suitable accommodation and support on release and ensured that he was aware of the plans, contributed to making the necessary arrangements and was happy with them.

Children in the criminal justice system will be supervised by the Youth Offending Team (YOT) which is child welfare centred and embedded in local authorities. If the child turns 18 they will be placed in either a Young Offender Institution in the young adult section, ie. 18 to 21 year olds, or in the young adult section of an adult prison.

A young adult will need a suitable address for release particularly where their release depends upon the parole board's direction. Once a young adult is 18 their management in the community will no longer be carried out by the YOT, except in the cases of 18 year olds released following a relatively short custodial period for a detention and training order. In most cases, young adults will be assessed and supervised in the community by an offender supervisor from their home area Probation Service. The approach of probation compared to YOT is entirely different, with the emphasis on compliance and enforcement rather than support and welfare. In our experience, a fairly punitive approach is taken towards Howard League clients who appear to have made good progress in custody and who plan to make a fresh start on release. This can mean being required to stay in a probation hostel far away from their family and support network. The blanket application for such a requirement fails to consider those unmet needs of many young adult prisoners, who have never developed the life skills, confidence and independence which most adolescents are able to develop.

From care to prison, and often without adult role models to learn from in their transition to adulthood, many young adults struggle to survive in probation approved premises and end up getting involved in money problems or have difficulty managing their appointments. Without the welfare oriented support package which leaving care teams can provide to this group of clients they face a much higher chance of being recalled soon after release.

### **Fit for purpose: the 'leaving care' framework**

The law provides continuing support for those who have been in care and are in transition to adulthood. It recognises the fact that all young people require a framework of financial, practical and emotional support. In principle, the leaving care provisions are sufficient to address and meet the needs of this significant and important group of neglected young people.

In practice, our legal work suggests that local authorities' delivery of leaving care services varies greatly. Regrettably there are (too) many examples in which the legal intervention of the Howard League's young adult team has been required to enable our young clients to obtain their entitlements. It is necessary to revise the statutory guidance and regulations to clarify further the duties of local authorities, including the provision of suitable accommodation.

Young people without a safe home and real support require robust advocacy to ensure the regulations are complied with. In our day to day work we recognise that the personal adviser system and advocacy services are not consistently effective in safeguarding the welfare and interests of the care leavers.

## What happens when the young person reaches 21 years of age?

Leaving care support ends at the age of 21 years unless the young person is in full-time education in which case the age is up to 24 years. What is the position for young adults after this?

There is no legal duty on the local authority to continue to work with their leaving care clients. This is an important issue as much of the research on young adults shows<sup>11</sup> adulthood is not necessarily reached as a matter of course at 18, 21 or 24 years of age. People develop differently but the legislation is fixed by age limits and is regardless of whether the individual is ready to function as an independent adult.

As we examine in the next chapter, there are other legal frameworks which place a duty on local authorities to assess and provide support for vulnerable adults. The experience of the Howard League's legal team suggests that those working with our leaving care clients do not access these services for clients beyond their leaving care rights. 'Care leavers' find themselves without support when they turn 21 years of age. Many of our clients have experienced traumatic childhoods (including times in custody), are without parental and other family support and are disproportionately disadvantaged in adult life without further help.

Neil had been under a full care order since the age of 10 years following physical and sexual abuse at home. He has been assessed as having a learning disability. He has been in prison on an indeterminate sentence for public protection since the age of 18 years. Neil was raped by his cell-mate in a YOI and his leaving care social worker contacted the Howard League to represent him in relation to the prison investigation into the rape. When he turned 21 years old, his social worker told him that she thought he was eligible for support as a vulnerable adult. She then promptly closed his leaving care file and did not refer him to the adult social services department, responsible for assessment and support of vulnerable adults. We are now taking steps to ensure that an assessment is made, by the local authority, of Neil's current needs as a vulnerable adult.

# Vulnerable young adults entitlements to accommodation and support

## Executive Summary

This chapter will look at the support that is available for vulnerable young adults from adult social services. It will look at the following:

- The assessment process to determine if a person is in need of social services support and if they will receive social services support.
- When the duty to assess a person's need for social services support arises and the referral process for assessments.
- The duty to assess young adults in custody and on release from custody.
- Identifying the 'responsible' authority, namely the social services department that would owe the young person the duty to provide services.
- The power to provide services to a vulnerable young adult in urgent need of help before an assessment of their needs is conducted.
- What to expect from the assessment of needs.
- The availability of accommodation provided by social services.
- The duties and powers of social services to provide support services.
- Local authorities' general discretion to improve social well-being of their area.
- Human rights considerations when considering the provision of support and assistance from social services.

## Introduction

It is estimated that 700,000 young people aged 16–24 years in the UK, have a disability (including learning disability). How does this group of vulnerable young adults access social services support?

Chapter two dealt with young adults entitled to social services support because they have a 'care' history. This chapter deals with entitlements to social services support because the young adult has a current need for social services support, often referred to as 'vulnerable adults'. The evidence of the legal team demonstrates that a large number of vulnerable young adults either have spent lengthy periods in custody as a child or have 'slipped through the net' and not received the support they should have received as a child.

Local authorities divide their social services departments into 'children's social services' and 'adult social services'.<sup>1</sup> The services discussed in this chapter are those provided by adult social services.

Support and assistance provided by adult social services is extremely wide-ranging and the powers and duties are drawn from a wide variety of different legislation.<sup>2</sup> These services are commonly referred to as 'community care services'. They can range from 24-hour supported accommodation to the provision of information leaflets on people's entitlements to welfare benefits.

<sup>1</sup>Social services departments will often be separated into different teams within these departments: for example, emergency teams, learning disability teams and 'over 65' teams.

<sup>2</sup>Section 46(3), National Health Service and Community Care Act 1990 defines 'community care services' and includes the following:

- National Assistance Act 1948;
- Health Service and Public Health Act 1968;
- Chronically Sick and Disabled Persons Act 1970 (this is not included in the statute but the Court of Appeal has determined that this is a 'community care service', see *R v. Kirklees MBC ex p Daykin* (1998) 1 CCLR 512 at 525A)
- National Health Service Act 2006 and National Health Service (Wales) Act 2006;
- Mental Health Act 1983;
- Disabled Persons (Services, Consultation and Representation) Act 1986.

## Assessing a person's needs

Not all adults with vulnerabilities will be entitled to support from social services. Social services will only provide support if certain criteria are fulfilled during an assessment. Social services then have to consider whether they have a duty (something that social services must do) or a discretion (something which they may do) to provide the support that is needed.

James is a vulnerable young man with learning disabilities and he suffers from post-traumatic stress disorder after a childhood of domestic violence. On referral to social services their first response was that they had to determine whether he was entitled to support from them before deciding whether to assess his needs. This directly contradicts the legislation and guidance which makes it clear that the 'assessment of needs' is the first stage when social services become aware of someone who appears to need support, as James did. This is not an uncommon problem when making referrals to social services.

The complicated framework of community care services has been brought together by one needs assessment process.<sup>3</sup> The aim of the needs assessment is to ensure a complete review of a person's needs and whether or not social services will provide support to meet those needs. The detail and length of the needs assessment will depend on the level of a person's needs.

The assessment of needs is a three-stage process:<sup>4</sup>

1. the assessment itself;
2. the identification of needs;
3. a decision about whether or not those needs will be met.

The assessed needs and the services that will be provided to meet these needs must be recorded in a care plan.<sup>5</sup> As indicated in the three-stage process, the fact that a person has needs, and that these needs have been identified by the local authority, does not mean that social services are under a duty to provide services.

### When does a duty to assess an individual's needs arise?

The caseload of the Howard League's legal team demonstrates that a large number of vulnerable young adults are not assessed.

Sarah is a highly vulnerable young woman who suffers from severe learning disabilities due to brain injury suffered from a car crash as a child. Sarah also has entrenched drug and alcohol misuse problems from an early age. Sarah was getting help from children's social services before she turned 18 years old. Due to her very particular needs, her social worker was of the view that the learning disability team within the adult social services department would be the best team to help her. Despite this, the social worker failed to refer Sarah to adult social services leaving her homeless and destitute until her youth offending team (YOT) worker took the lead in referring her to adult social services. After referring Sarah to adult social services it was some months before adult social services began to engage with Sarah.

Unlike the Children Act 1989,<sup>6</sup> there is no duty on social services to take reasonable steps to identify the extent to which there are vulnerable adults in their area. There is no duty to actively look for vulnerable young adults who may need help. However, once social services become aware that an individual appears<sup>7</sup> to be in need of community care services, the duty to assess their needs and consider how, if at all, they will be assisted, arises.

<sup>3</sup>Section 47, National Health Service and Community Care Act 1990: '(1) Subject to subsections (5) and (6) below, where it appears to a local authority that any person for whom they may provide or arrange for the provision of community care services may be in need of any such services, the authority—

(a) shall carry out an assessment of his needs for those services; and

(b) having regard to the results of that assessment, shall then decide whether his needs call for the provision by them of any such services.

<sup>4</sup>R v. Lambeth LBC ex p K (2000) 3 CCLR 141 at 149H.

<sup>5</sup>R v. Islington LBC ex p Rixon (1998) 1 CCLR 119.

<sup>6</sup>See chapter 2 for further details.

<sup>7</sup>See section 47(1), National Health Service and Community Care Act 1990.

The threshold to assess ‘vulnerable adults’ is set deliberately low to ensure vulnerable adults are not turned away from social services without an assessment. This principle is contained in case law<sup>8</sup> and policy guidance; paragraph 30 of the Fair Access to Care Services guidance (‘FACS’)<sup>9</sup> states that when deciding whether a person appears to be in need of community care services, local authorities should ‘set a low threshold and avoid screening individuals out of the assessment process before sufficient information is known about them’.

The duty to assess is irrespective of the individual actually qualifying for any service.

The Howard League’s legal team’s experience suggests that there is a lack of awareness of the entitlement to support from adult social services. Any professional in contact with a vulnerable adult can make a referral to adult social services and it is unnecessary for young adults to refer themselves nor do they have to consent to the assessment.

Neil has learning disabilities and suffered a traumatic childhood. He was raped by a family member as a young child. His family relationships have been problematic throughout his life. Neil was taken into care and eventually, aged 18 years, was sentenced to custody. Whilst in custody he was still entitled to support from children’s social services until he turned 21 years old. After his birthday he was visited by his social worker from the children’s department and told that he may be entitled to help from adult social services. Social services closed his file and did not make any referral.

When assessing a person for community care services, if it becomes apparent that they are in need of services from a different body, for example, housing or health services, the authority must invite the relevant body to assist in conducting the assessment. This ensures that the needs assessment will cover all potential areas of need.

#### Young adults in custody – the duty to assess

Without referrals to adult social services departments of vulnerable young adults in custody, it is unsurprising that this age group has high reoffending rates<sup>10</sup> given the low level of support on release from custody.

Julian is a vulnerable 20-year-old who suffers from mental health problems. Whilst in a YOI, Julian was receiving one-to-one support from a disability liaison officer. Julian had been attacked in his home area in the past and both Julian and his probation officer agreed he should not return to his home area. Despite both the YOI and the probation service being aware of Julian’s vulnerabilities, no-one made a referral to adult social services. The Howard League’s legal team made a referral and social services assessed that he was in need of supported accommodation. Despite the assessment, social services refused to provide supported accommodation on release from custody until the Howard League initiated legal proceedings against them.

Guidance to prison officers on the resettlement needs of young adults in custody can be found in Prison Service Order 2300 ‘Resettlement’. PSO 2300 is the key document for the prison service when dealing with the resettlement of vulnerable adults. Whilst social services should have a key role in the resettlement of vulnerable offenders, there is very limited reference to their role in this important guidance.

PSO 2300 states that: ‘[T]he preparatory work for resettlement must be carried out in close consultation and partnership with ... other statutory, voluntary or private sector bodies who can assist prisoners. Such bodies may include specialists in accommodation, employment, training or education, health and social care, and those who assist particular groups of prisoners such as women, foreign nationals, ethnic minorities and under-18s.’<sup>11</sup>

<sup>8</sup> *R v. Bristol CC ex p Penfold (1998) 1 CCLR 315.*

<sup>9</sup> *Issued under Local Authority Social Services Act 1970 in Local Authority Circular (2002)13.*

<sup>10</sup> *In 2007 the one-year reoffending rate for 18–21-year-olds leaving custody was 56.2% (Hansard, HC Deb., 7 January 2010, col. 553W).*

<sup>11</sup> *PSO 2300 ‘Resettlement’, para. 3.1.*

Paragraph 39 of PSO 2300 also mentions social services:

'In order to provide an appropriate regime and maintain public confidence, it will be good practice for individual resettlement estate establishments to maintain strong links with their local communities, including:

- i. probation, police and social services;
- ii. education and training providers;
- iii. local employers;
- iv. Jobcentre Plus;
- v. drug and alcohol treatment organisations;
- vi. housing providers;
- vii. community organisations; and
- viii. neighbouring residents and businesses.'

Whilst this is useful for prisoners who are being released into the local community where the prison is physically located, it is not useful if the prisoner is being released to a community far away from the prison. In 2009, the average distance for male 18 to 21-year-old prisoners was 49 miles.<sup>12</sup> In 2007, 1,250 young male prisoners under 21 years old were in a prison over 100 miles away.<sup>13</sup> The local authorities in which prisons are located will have the duty to assess the prisoners unless the 'responsible' authority has been identified and it is reasonable to assume that it will carry out the assessment.<sup>14</sup>

Our caseload demonstrates that the probation service places considerable emphasis on evaluating a prisoner's 'risk factors' which is often heightened by poor accommodation and support when combined with their needs. This focus on risk and away from welfare impacts on the probation service's dealings with our clients and social services. In our experience, very few probation services, if any, will actively engage or refer clients to social services.

A pilot T2A project in Birmingham is delivered by the West Midlands probation service together with Birmingham youth offending service and was launched in July 2009. The aim is to introduce a different way of working to the probation service to add value and to assist in the transition of young people from the youth offending service to adult probation. The pilot project works with young people aged 17–24 years and tailors individual interventions to the young person's maturity and needs. The pilot project offers mentoring, as well as specific help with accommodation, employment, relationships and substance misuse, depending on the young person's needs. The pilot project has established a relationship with social services and aims to enhance the young person's life opportunities.

The PSO does specifically address two groups of people:

1. where a prisoner approaching release has a mental health problem, the prison healthcare services must consider whether a referral should be made to the local community mental health team.<sup>15</sup>

A report by the Prison Reform Trust found that up to three-quarters of men in prison suffer from two or more mental disorders; about one in ten have a functional psychosis;

<sup>12</sup>Hansard, HC Deb., 7 January 2010, col. 548W.

<sup>13</sup>Hansard, HC Deb., 25 April 2008, col. 2370W.

<sup>14</sup>R (J) v. Southend BC [2005] EWHC 457 (Admin), 5 August 2005; (2007) 10 CCLR 407 at para. 43.

<sup>15</sup>PSO 2300 'Resettlement', para. 3.23.

and an estimated 3,000–3,700 prisoners at any time have problems sufficiently serious to require urgent transfer to secure psychiatric units (Rickford and Edgar 2005). In light of these statistics, you would expect such referrals to be common.

2. The disabled and elderly prisoners may require a community care assessment:

The Prison Service Order should go further and require all staff employed by the prison service to be trained to make such referrals. Further, the prison service should make provision for a social worker permanently based in all young adult YOIs to ensure that referrals are made to the relevant social services for assessments when needed.

Preparations for successful resettlement require a clear plan for the young person to have suitable accommodation, support and plans for training and work. If social services support is required planning well before release will be critical.

Clare is a vulnerable young woman serving a custodial sentence. The Parole Board has a power to release her and one of the key factors will be where Clare will reside on release and what support she will receive. Therefore, social services have to assess her needs and detail what accommodation and support they would provide to Clare if the Parole Board was to release her. Social services initially tried to argue they did not need to do this until Clare was released. Clare was in an impossible situation because she could not be released unless accommodation and support was arranged before the Parole Board hearing. After starting court proceedings, social services agreed to assess Clare's needs in advance of her Parole Board review.

John is a vulnerable young man with a young child. Social services accepted that John needed support and accommodation in the community. John received a custodial sentence and social services are now saying that they do not need to assess him whilst he is in custody. This matter is currently ongoing.

The *Out for Good* report (Howard League 2006) recommended that resettlement services for those in custody should be more widely available.

'For those young men held in custody, the prison regime and resettlement services need to be significantly improved ... they [prison officers] should be encouraged to be more approachable and knowledgeable about the services that will help the young men as they prepare for release.' (p.12)

### **Identifying the responsible authority**

Young adults often have a background of moving around from area to area. This can mean that they have had contact with a number of different local authorities which can lead to disputes about which social services department has a duty to assess. It is necessary to be clear which social services department may have the duty to provide services.

Throughout his life, Neil had lived in a London borough as well as outside of London. For a period of time he had been going back and forth between the two areas. Prior to entering custody he was living outside of London but in accommodation paid for by the London borough. On making a referral to the London borough social services for an assessment of Neil's needs, they denied any duty to assess. The social services outside of London also denied any duty to assess. Neil was 'falling through the cracks' and careful consideration had to be given to which social services department had the duty to assess.

The responsible authority is the authority in which the person is 'ordinarily resident'.<sup>16</sup> A person's imprisonment does not impact on this rule.<sup>17</sup> The exceptions are when the person does not have a 'settled residence' or he/she is in urgent need. In these cases, the duty to assess is placed on the authority in which the person is physically present. For prisoners, this will be the authority in which the prison is based. This should be an incentive for local

<sup>16</sup> *a man's abode in a partic place or country which he has adopted voluntarily and for settled purposes as part of the regular order of his life for the time being, whether of short or of long duration*' (Shah v. Barnet [1983]2 WLR 16).

<sup>17</sup> Local Authority Circular (93)7 and Fox v. Stirk [1970] 3 WLR 147.

authorities with prisons in their area to take an active role in identifying vulnerable prisoners. In practice our experience confirms that this is not done.

### **Provision of community care services without an assessment**

If a person is in urgent need of help, social services have the power to provide community care services without conducting an assessment.<sup>18</sup> The authority will then conduct the needs assessment as soon as is reasonable after the provision of the services has commenced.

This scenario is particularly likely for prisoners on release who are in need of community care services but no needs assessment has been started or conducted.

### **The assessment process**

In practice there are huge discrepancies in the way in which social services conduct assessments. Guidelines have been issued requiring social services to follow certain procedures although there is still considerable discretion given regarding the manner and form of the assessment of needs.

The guidance is contained in the FACS document and was issued to introduce consistency and fairness in the provision of community care services.

The FACS guidance says the first stage requires the authority to assess a person's needs. The second step is to identify the 'presenting needs',<sup>19</sup> meaning the needs which could be met by community care services. In identifying these needs and considering which needs will be met, the local authority must 'gather' and 'take into account' all relevant information so far as is practicable.

The local authority must explore all potential needs and the scope and depth of the assessment will depend on the particular circumstances of the person. Importantly, the assessment of need must not be restricted for policy or financial reasons.

If it becomes apparent that a person has a possible medical or housing need, the local authority must notify the relevant authority, for example the relevant primary care trust, and must invite that authority to contribute to the assessment.<sup>20</sup>

What a person says about his or her abilities and needs must be taken into account by the local authority.

The final stage is to determine which needs will be classed as 'eligible needs', namely needs that the local authority will meet through the provision of community care services.<sup>21</sup> This is known as the 'service provision decision'. In making this decision, the local authority must 'have regard to' the information gathered including the assessment of the presenting needs, its own 'eligibility criteria'<sup>22</sup> and the framework contained in the FACS guidance.

The FACS guidance sets out the four eligibility bands.<sup>23</sup> A person will fall within the 'critical' band when there is a risk to independence or there are other consequences if needs are not addressed and:

- life is, or will be, threatened; and/or
- significant health problems have developed or will develop; and/or
- there is, or will be, little or no choice and control over vital aspects of the immediate environment; and/or
- there is, or will be an inability to carry out vital personal care or domestic routines; and/or

<sup>18</sup> Section 47(5), National Health Service and Community Care Act 1990.

<sup>19</sup> Defined in the FACS guidance at para. 13 as 'the issues and problems that are identified when individuals contact, or are referred to, councils seeking social care support'.

<sup>20</sup> Section 47(3), National Health Service and Community Care Act 1990.

<sup>21</sup> FACS guidance, para. 42.

<sup>22</sup> FACS guidance, para. 15, requires all local authorities to specify their own eligibility criteria.

<sup>23</sup> At para. 16.

- vital social support systems and relationships cannot or will not be sustained.

When evaluating 'risk to independence', the assessment should focus on the following four aspects:

- autonomy and freedom to make choices;
- health and safety including freedom from harm, abuse and neglect, and taking wider issues of housing and community safety into account;
- the ability to manage personal and other daily routines;
- involvement in family and wider community life, including leisure, hobbies, unpaid and paid work, learning and volunteering.

The guidance requires local authorities to consider for which eligibility bands they will provide services bearing in mind that they must provide for critical needs but have the discretion to decide whether to provide for the lower categories of needs.<sup>24</sup>

It is important to note that once a decision has been made about which 'presenting' needs are 'eligible' needs, local authorities should meet the eligible needs.<sup>25</sup>

### **Is a local authority entitled to take into account resources when deciding which needs will be met?**

Local authorities are not entitled to take into account limits on their resources when conducting needs assessments. They are permitted to take into account resource limits when deciding their general eligibility criteria, provided that it is not the sole criterion used.

### **The provision of accommodation by social services**

The Housing Act 1996 is the main piece of legislation governing the provision of social housing and this is discussed in chapter four. Outside the housing legislation and the private sector, there are certain situations in which social services have a power or a duty to provide accommodation.

#### Section 21, National Assistance Act 1948<sup>26</sup>

A person is entitled<sup>27</sup> to accommodation under this section<sup>28</sup> when they do not have accommodation available to them and are in need of care and attention<sup>29</sup> for one or more of the following reasons:

- age;
- illness (or prevention/after-care of illness);
- disability (this is unqualified and therefore does not have to be substantial or permanent);
- any other circumstance (for example, drug or alcohol dependency).

In practice 'age' is taken to mean old age and this section is used to provide care homes for the elderly. In 2008, 182,200 people aged over 65 years were provided with supported accommodation under s.21 National Assistance Act 1948. Only 53,900 18 to 65-year-olds were provided with supported accommodation over the same period.<sup>30</sup> Current practice is to give

<sup>24</sup> However, if the local authority has a policy to provide for a lower category of needs, it must follow that policy.

<sup>25</sup> FACS guidance, para. 43.

<sup>26</sup> Section 21, National Assistance Act 1948, subsection: '(1) Subject to and in accordance with the provisions of this Part of this Act, a local authority may with the approval of the Secretary of State, and to such extent as he may direct shall, make arrangements for providing (a) residential accommodation for persons who by reason of age, illness, disability or any other circumstances are in need of care and attention which is not otherwise available to them; (aa) residential accommodation for expectant and nursing mothers who are in need of care and attention which is not otherwise available to them.'

<sup>27</sup> Section 21(1)(a) refers to a discretion and a duty, where directed by the Secretary of State. Such directions were given in Local Authority Circular 93(10) crystallising this section into a duty to provide accommodation.

<sup>28</sup> Subsection (1)(a).

<sup>29</sup> The House of Lords in *R (on the application of M(FC)) v. Slough Borough Council* [2008] 1 WLR 808; (2008) 11 CCLR 733; [2008] UKHL 52. 'Care and attention' was held to mean 'looking after' which means 'doing something for the person being cared for which he cannot or should not be expected to do for himself: it might be household tasks which an old person can no longer perform or can only perform with great difficulty; it might be protection from risks which a mentally disabled person cannot perceive; it might be personal care, such as feeding, washing or toileting. This is not an exhaustive list. The provision of medical care is expressly excluded [by section 21(8)]' per Baroness Hale at para. 33.

<sup>30</sup> Hansard, HC Deb., 27 October 2009, col. 268W.

accommodation to young adults where they are severely disabled (physically or learning). However, the Howard League's legal team's caseload evidences that there is an unmet demand for the provision of accommodation for young adults under this section.

A person has to either be 'ordinarily resident'<sup>31</sup> in the local authority area for the authority to owe them a duty. If there is an urgent need for accommodation the 'ordinarily resident' requirement does not apply.

The need for 'care and attention' must be in addition to a need for accommodation and can be addressed only if accommodation is provided. If a person's needs can be met by another source (that is available and accessible) and the person chooses not to use this source, they cannot rely on s.21 National Assistance Act 1948.

Matthew has had a difficult childhood. When Matthew was 11 years old, his mother began to request social services help. Matthew exhibited self-harming behaviour and tried to hang himself when he was 12 years old. He had a statement of special educational needs from age 9 years and went to a school for children with emotional and behavioural difficulties. As a 16-year-old Matthew was evicted from his home and, despite clear duties on social services to help Matthew, he received no support from social services. Matthew was sofa-surfing and sleeping on the streets, interrupted by periods in custody. On occasion he was placed in unsuitable bed and breakfast accommodation by the housing department. He could not manage to sustain this accommodation and was eventually found 'intentionally homeless'. This meant that he could not access housing via the housing route.

The Howard League brought court proceedings against social services arguing that Matthew was entitled to s.21 National Assistance Act 1948 accommodation in light of his vulnerabilities. Social services initially disagreed but were ordered by the court to provide 'suitable accommodation'. Social services eventually agreed that Matthew needed 'care and attention' which required accommodation and so agreed to accommodate him under s.21.

### Section 117, Mental Health Act 1983

Another provision requiring local authorities to provide accommodation is contained in s.117 Mental Health Act 1983.<sup>32</sup>

This section applies to people who have been detained in hospital under certain provisions of the Mental Health Act 1983. The duty to provide 'after-care' services, which includes accommodation, is a strong one and there is no restriction on the type of service that can be provided. The purpose of the after-care services should be to 'equip patients to cope with life outside hospital and function there successfully without danger to themselves or others'.<sup>33</sup>

The duty is not absolute as the local authority is only required to use their best endeavours to provide after-care services. If there is a genuine inability to provide accommodation because of the particular circumstances of the case then the authority may have exhausted its duty.

<sup>32</sup> Section 117, Mental Health Act 'After-care': '(1) This section applies to persons who are detained under section 3 above, or admitted to a hospital in pursuance of a hospital order made under section 37 above, or transferred to a hospital in pursuance of a hospital direction made under section 45A above or a transfer direction made under section 47 or 48 above, and then cease to be detained and (whether or not immediately after so ceasing) leave hospital.

(2) It shall be the duty of the [Primary Care Trust or] [Local Health Board] and of the local social services authority to provide, in co-operation with relevant voluntary agencies, after-care services for any person to whom this section applies until such time as the [Primary Care Trust or] [Local Health Board] and the local social services authority are satisfied that the person concerned is no longer in need of such services [; but they shall not be so satisfied in the case of a] [community patient while he remains such a patient.]

(2B) Section 32 above shall apply for the purposes of this section as it applies for the purposes of Part II of this Act.

(3) In this section ["the Primary Care Trust or Local Health Board"] means the Primary Care Trust or [Local Health Board], and "the local social services authority" means the local social services authority, for the area in which the person concerned is resident or to which he is sent on discharge by the hospital in which he was detained.'

<sup>33</sup> Code of Practice to Mental Health Act 1983, para. 27.1.

## Support services from social services

The duties and powers to provide support services are contained in a number of different statutes and they are wide-ranging. This is not an exhaustive explanation of all of the different provisions.

### Section 29, National Assistance Act 1948<sup>34</sup>

This section is the founding statute for community-based services. It was enacted as part of the development of the post-World War II welfare state. It is couched in very general terms and the powers and duties created by this section cannot be used by local authorities without a direction from the Secretary of State. To receive services provided under this regime a person must be either blind, deaf, dumb, suffering from mental disorder of any description or substantially and permanently handicapped by 'illness, injury, congenital deformity or such other disabilities as may be prescribed by the Minister'.

Examples of services that are provided under this section are as follows:

- Information, advice and support around welfare benefits and what a person is entitled to under this section and disability services.
- Assistance in finding accommodation.
- Day centres and other facilities for social, cultural and recreational activities. This can take various forms, including art, sport, drama etc.
- Occupational activities, for example, workshops which provide employment for certain groups of people. A common example is for people with learning disabilities. Hostels can be provided alongside the workshops.
- Holiday homes.
- Free or subsidised travel for those who are not otherwise entitled to travel concessions.

### Section 2, Chronically Sick and Disabled Persons Act 1970

The aim of this section was to convert discretionary services under s.29 National Assistance Act 1948 into a specific set of enforceable rights for disabled people. The section specifically refers to s.29 National Assistance Act 1948 and states that where this section applies the authority can provide a variety of services if they are necessary to meet his or her needs.

This section applies to adults and children.<sup>35</sup> One of the eligibility criteria for assistance under this section and s.29 National Assistance Act 1948 is that the impairment is 'permanent'. This obviously excludes a large number of people who may be in need of these services but who should be able to obtain services under the National Health Service Act 2006.

### National Health Service Act 2006 (and National Health Service (Wales) Act 2006)

This Act can assist people who are temporarily in need, for example, people who have suffered an injury but who will fully recover or people with alcohol or drug addictions. S.254 and schedule 20<sup>36</sup> define the services to be provided by social services under this legislation.

Particularly relevant for young adults is the definition of illness<sup>37</sup> which also specifically includes mental disorder<sup>38</sup> and people with alcohol or drug dependencies.

<sup>34</sup> Section 29(1) states as follows: 'A local authority may, with the approval of the Secretary of State, and to such extent as he may direct in relation to persons ordinarily resident in the area of the local authority shall make arrangements for promoting the welfare of persons to whom this section applies, that is to say persons who are blind, deaf or dumb, or who suffer from mental disorder of any description and other persons who are substantially and permanently handicapped by illness, injury, or congenital deformity or such other disabilities as may be prescribed by the Minister.'

<sup>35</sup> Section 28A, Chronically Sick and Disabled Persons Act 1970.

<sup>36</sup> Section 192 and schedule 15, National Health Services (Wales) Act 2006.

## Local authority's general discretion to improve social well-being

S.2 Local Government Act 2000<sup>39</sup> empowers a local authority to do anything which it considers is likely to improve social well-being in its area. This can be to improve the social well-being of the whole area or individuals<sup>40</sup> and allows local authorities to provide accommodation or financial assistance.<sup>41</sup>

Although this section is a power not a duty, a local authority must exercise its discretion in a reasonable way when considering a request for help.

### Conclusion

The Howard League's legal team's experience demonstrates that, in practice, there is a lack of recognition of the vulnerability of young adults. This is compounded by a lack of age-appropriate services.

John is an 18-year-old who has experienced years of being victim to, and witnessing, domestic violence. John suffers from mental health problems as a result of his horrific childhood. Social services failed to help John whilst he was a child. John is desperate for support from social services. John feels that he is expected to live independently but has not yet developed the skills to do this. He describes how he can cook unhealthy food but would like to learn how to cook himself a decent meal. His main concern is having the knowledge that if he is in trouble there will be someone 'on his side' and there as a safety net to help him. Social services are refusing to accept any duty to assist John.

The difference in the duties towards, and entitlements of, young adults compared to those owed to children is huge and based around an arbitrary age limit. There has been a shift in understanding of the vulnerabilities of young adults, in particular young adults who have not had a supportive and caring upbringing. This needs to be reflected in a clarification and improvement of social services' duties and practices towards young adults.

<sup>37</sup> Section 275(1), National Health Services Act 2006.

<sup>38</sup> Within the meaning of the Mental Health Act 1983.

Local Government Act 2000, section 2 'Promotion of well-being': '(1) Every local authority are to have power to do anything which they consider is likely to achieve any one or more of the following objects—

(a) the promotion or improvement of the economic well-being of their area,  
(b) the promotion or improvement of the social well-being of their area, and  
(c) the promotion or improvement of the environmental well-being of their area.'

Local Government Act 2000, section 2: '(2) The power under subsection (1) may be exercised in relation to or for the benefit of—

(a) the whole or any part of a local authority's area, or  
(b) all or any persons resident or present in a local authority's area.'

'(4) The power under subsection (1) includes power for a local authority to—

(a) incur expenditure,  
(b) give financial assistance to any person,  
(c) enter into arrangements or agreements with any person,  
(d) co-operate with, or facilitate or co-ordinate the activities of, any person,  
(e) exercise on behalf of any person any functions of that person, and  
(f) provide staff, goods, services or accommodation to any person.'

# YOUNG ADULTS ENTITLEMENTS TO HOUSING

## Executive summary

This chapter will look at ways in which young adults can access housing outside of the private sector. This chapter will consider the following:

- What happens when a young adult is homeless.
- The initial assessment and provision of emergency accommodation.
- How and where a homeless young adult can apply for assistance.
- What 'homelessness' actually means.
- The criteria for a young adult to be entitled to assistance with housing.
- The decision-making process, including how a young adult can challenge a negative decision.
- What the duty towards homeless people actually means.
- Social housing.

## Introduction

In 2007, 43,075 16 to 24-year-olds were classified statutorily homeless (Quilgars, Johnsen and Pleace 2008). This is estimated to be much less than the actual number of young adults affected by homelessness (75,000), let alone those in unsuitable accommodation.

A young adult may need accommodation either as part of a package of support from social services or independently of social services. If a young adult is homeless he or she may be entitled to accommodation although there are limitations to this right. Where a young adult is not homeless, he or she may still need assistance with accommodation through 'social housing'.

It is important to note that the statutory regime relating to housing does not provide a guaranteed right to accommodation and therefore it does not prevent certain people being left to live on the streets.

International human rights law recognises everyone's right to an adequate standard of living, including adequate housing. However, this right does not equate to a right to property or accommodation. It is limited to 'measures that are needed to prevent homelessness, prohibit forced evictions, address discrimination, focus on the most vulnerable and marginalized groups, ensure security of tenure to all, and guarantee that everyone's housing is adequate' (Office of the United Nations High Commissioner for Human Rights 2009, p.6).

The importance of suitable and stable accommodation for young adults cannot be underestimated. Without such accommodation a young adult's ability to access education, training or employment is almost impossible. Surveys among single homeless people have consistently found that between 80% and 90% are unemployed (Randall and Brown 1999) which is recognised as being seriously prejudicial to opportunities and chances in later life.

A recent Barrow Cadbury T2A Alliance report, Universities of Crime; Young Adults, the Criminal Justice System and Social Policy (Chater (Catch22) 2009) considered the difference between young adults with a highly-supported 'transition into adulthood' and the support

and services offered to those struggling with the transition to adulthood through a lack of suitable housing, substance misuse or mental ill health. The report concluded:

‘... at the very point when life feels most unstable, and when young people need a firm base from which to try out the different life options that are open to them, the support structures fall away. For example, both housing and employment for disadvantaged young adults tend to be short-term and rapidly changing.’ (p.16)

## **Homelessness**

The law on homelessness is found in Part 7 of the Housing Act 1996 which sets out the scheme for young adults (and others) who are homeless or threatened with homelessness.

### **Initial assessment**

When a person presents as homeless the first step is to hold a preliminary assessment to determine whether there is a duty to provide interim accommodation<sup>1</sup> while the person's right to accommodation is determined. The intention of the scheme is for immediate assistance to be provided with a detailed assessment of a person's entitlements to housing to be followed.

The way in which a homeless person can make an application for accommodation assistance is set deliberately wide. A person can make an application to any department of an authority, in any form and the application can be made by someone else on behalf of the homeless person (Department for Communities and Local Government 2006, ch. 6). The intention is to ensure that vulnerable homeless people are not prevented from making an application by strict rules.

The duty to provide interim accommodation arises where the housing authority has reason to believe the applicant may:

- be homeless;
- be eligible for assistance;
- have priority need.

This initial assessment is meant to be a simple, quick assessment and it involves a very low threshold. The Homelessness Code of Guidance (Department for Communities and Local Government 2006) states that this assessment should be carried out on the day of the application (para. 6.16), to determine if interim accommodation under s.188 Housing Act 1996 should be provided. Local authorities are obliged to ensure that there is a 24-hour emergency advice and assistance service (para. 6.8).

If the inquiries conclude that the authority does not have a duty to provide accommodation under s.188 then the young person may have the accommodation withdrawn whether or not they are appealing the decision.

A person can make a homelessness application to any local authority whether or not he or she has ever lived in that authority's area before. If a decision is made that the applicant is entitled to housing assistance, then the authority can make a referral to a different authority for it to provide the assistance.

<sup>1</sup> Section 188(1), Housing Act 1996 imposes a duty to provide interim accommodation in circumstances outlined above: '(1) If the local housing authority have reason to believe that an applicant may be homeless, eligible for assistance and have a priority need, they shall secure that accommodation is available for his occupation pending a decision as to the duty (if any) owed to him under the following provisions of this Part.'

## Housing duties to the homeless

The main duty to provide accommodation is contained in s.193(2) Housing Act 1996 which requires housing authorities to secure suitable accommodation for the applicant when the following conditions are satisfied:

- the applicant is homeless;
- the applicant is eligible;
- the applicant is in priority need;
- the applicant is not intentionally homeless.

Once a person has presented as homeless or has been threatened with homelessness a final decision should be reached within 33 days (Department for Communities and Local Government 2006, para. 6.16). Where an applicant is in interim accommodation, the guidance reiterates the need for urgency in making the final decision to minimise uncertainty for the applicant (Department for Communities and Local Government 2006, para. 7.7).

### Homelessness<sup>2</sup>

This means that the applicant does not have accommodation in the UK or elsewhere available for them to reside at, and this includes accommodation in which it would be unreasonable for the applicant to reside. What is 'reasonable' depends on the circumstances of the case and could be a range of things for example where the person will be subject to violence.<sup>3</sup>

If a person is informed that they are about to become homeless, they can make a homelessness application up to 28 days in advance of the date when they will become homeless. The housing authority should make inquiries and, if there is a duty to accommodate, arrange accommodation in advance so that it is ready immediately when the person is homeless. Housing practitioners often find that housing authorities rarely comply with this duty. There is no duty to provide accommodation before the date of homelessness.

The courts have established that a prison cell is not 'accommodation' and, therefore, can not count against a prisoner when making a homelessness application in advance of release, which could be up to 28 days before their release. The Howard League's legal team's experience suggests that there is a lack of assistance for prisoners in applying for accommodation in advance of release.

### Eligible

The main reason why a person may not be eligible is their immigration status. Consideration of this is outside the limits of this publication and requires specialist advice.

### Priority need

As stated above, there is no right to accommodation unless certain requirements are fulfilled. One requirement is that the person is in 'priority need' of social housing which includes:

- (a) a pregnant woman or a person with whom she resides or might reasonably be expected to reside;
- (b) a person with whom dependent children reside or might reasonably be expected to reside;

<sup>2</sup>Section 175, Housing Act 1996.

<sup>3</sup>Section 177, Housing Act 1996.

- (c) a person who is vulnerable as a result of old age, mental illness or handicap or physical disability or other special reason, or with whom such a person resides or might reasonably be expected to reside;
- (d) a person who is homeless or threatened with homelessness as a result of an emergency such as flood, fire or other disaster;
- (e) children aged 16 or 17 years who are not owed accommodation duties by social services;
- (f) 18 to 21-year-old 'care leavers';<sup>4</sup>
- (g) a person who is vulnerable as a result of being a 'care leaver' who is 21 years old or older, having been in the armed forces, having been in custody, or having become homeless because of violence.<sup>5</sup>

The meaning of 'vulnerable' is defined as a person who is 'less able to fend for him/herself than an ordinary homeless person so that he or she would suffer injury or detriment, in circumstances where a less vulnerable person would be able to cope without harmful effects' (Department for Communities and Local Government 2006, para. 10.13).

Subject to the 'vulnerability' test above, young adults who have been in custody are generally granted priority need if they can show that they are vulnerable by reason of being in custody. In light of the conviction and reoffending rates of prisoners without stable accommodation, this does not go far enough.<sup>6</sup> People should be granted priority need if they are released from custody and homeless without consideration of the 'vulnerability' test.<sup>7</sup>

One in three prisoners will not have stable accommodation prior to imprisonment, and short-sentence offenders are two to three times more likely to reoffend if they do not have suitable housing (see Nacro 2006).

#### 'Intentionally homeless'

A person is classed as intentionally homeless if he or she does, or fails to do, something which causes the applicant to cease to occupy accommodation which is available and reasonable to occupy.<sup>8</sup>

A report, Universities of Crime; Young Adults, the Criminal Justice System and Social Policy (Chater (Catch 22) 2009), by the T2A Alliance, highlights the difference between university students with the 'safety net' option of parent's accommodation, the increase in the average age of leaving home (24 years) (Helyar-Cardwell (Catch 22) 2009, p.45) and those who enter social housing when first living alone. The report (Chater (Catch 22) 2009) states:

'Many of those young adults who experience problems with social housing when first living alone can find themselves barred from claiming further support. Arguments with neighbours, an inability to manage household bills or rent payments, and simply 'giving up' a tenancy because they feel overwhelmed, can all be classed as intentional homelessness by local authority housing departments, with the result that further help can be denied.' (p.16)

<sup>4</sup> See chapter 2 for more details.

<sup>5</sup> See section 189(1), Housing Act 1996 and the Homelessness Persons (Priority Need for Accommodation) (England) Order 2002 (Statutory Instrument No 2051).

<sup>6</sup> Shelter factsheet, Young People and Homelessness (Diaz 2005) states that 'research suggests that secure accommodation on release can reduce re-offending by over 20 per cent' (p.9).

<sup>7</sup> The Welsh regulations, the Homeless Persons (Priority Need) (Wales) Order 2001 (Statutory Instrument No 607), state that people leaving custody are priority need, without the additional 'vulnerability' requirement.

<sup>8</sup> Section 191, Housing Act 1996.

John left custody aged 18 years. Prior to entering custody, John had been placed in a number of different, unsuitable, bed and breakfasts whilst a child. He had been evicted from a number of them for a variety of reasons and had accrued debt due to rent arrears. Social services had acted unlawfully by failing to provide John with suitable accommodation, without charge, as a child. On release from custody, John made a homelessness application and was deemed to be intentionally homeless due to his accommodation history as a child. The Howard League successfully argued that social services owed John a duty to accommodate him under s.21 National Assistance Act 1948 (see chapter 3 for more information).

## Decision

A decision should be made within 33 days and the applicant must be notified of the decision in writing. If the outcome of the decision is negative, then the reasons for the decision must be given and the applicant offered the opportunity to appeal this decision.

## 'Full' housing duty

If the authority is satisfied that the applicant is homeless and in priority need, then the authority owes the applicant the full housing duty under s.193 Housing Act 1996.<sup>9</sup>

This means that the authority must 'secure that accommodation is available for occupation by the applicant'. This duty can be discharged in a number of different ways, the most obvious being the actual provision of accommodation.<sup>10</sup> However, it can be discharged by giving advice and assistance that will enable the applicant to secure accommodation from another person.

## Review

If the decision is negative, an applicant can request a review of the decision or challenge it by way of judicial review.<sup>11</sup>

A person must request a review within 21 days of being notified of the decision. The authority must then complete the review within eight weeks of the request.

## Appeal

If the review confirms the initial decision, the applicant can appeal against the decision to the county court on a point of law.<sup>12</sup> The appeal must be brought within 21 days of the applicant being notified of the review decision, or failure to provide a decision by the end of the procedure. The court has the power to confirm, quash (i.e., cancel) or vary the decision.

## Social housing

Social housing<sup>13</sup> is 'accommodation let by local authorities and other registered social landlords'.<sup>14</sup>

A reduction in the available pool of social housing accommodation throughout the 1980s has resulted in extremely lengthy waiting lists as demand exceeds availability. The fact that there is no right to social housing means that it is difficult to challenge the lack of availability of social housing.

<sup>9</sup> Housing Act 1996, section 193: '(1) This section applies where the local housing authority are satisfied that an applicant is homeless, eligible for assistance and has a priority need, and are not satisfied that he became homeless intentionally. This section has effect subject to section 197 (duty where other suitable accommodation available). (2) Unless the authority refer the application to another local housing authority (see section 198), they shall secure that accommodation is available for occupation by the applicant.'

<sup>10</sup> This will be by way of a non-secure tenancy. For the applicant to obtain a secure tenancy, he or she must obtain this in the same way as all other applicants for social tenancies; see below for more information.

<sup>11</sup> See chapter 5 for more information.

<sup>12</sup> Section 204, Housing Act 1996.

<sup>13</sup> Part VI, Housing Act 1996 governs social housing.

<sup>14</sup> See 'Glossary of terms' for more information.

Shelter has analysed 2008/9 figures on the number of social housing lettings granted to new tenants compared with the number of households on local authorities' housing waiting lists. Their findings have demonstrated that, for instance, the London Borough of Barnet's waiting list will take 33.37 years to clear.<sup>15</sup>

A survey by Shelter<sup>16</sup> of 18 to 31-year-olds demonstrated that 80% of the interviewees were worried about soaring house prices and less than 40% believed they would be in a position to buy within the next ten years. The lack of suitable, affordable housing is clearly an issue of concern for young adults. Finding a secure place to live is even harder for those young adults without family or financial support.

A report published in March 2004 predicted that the supply of social and affordable housing would have to increase 17,000 units per year for the next ten years to meet the anticipated need for social housing (Barker 2004).

## Applying for social housing

Anyone can apply for a social tenancy. Local authorities must consider all applications who may determine that the applicant is either ineligible (due to their immigration status or 'unacceptable behaviour') or that no priority will be given. If they decide that a person is eligible and will be given priority, the next stage is to decide what level of priority and to be placed into an 'allocations scheme' until social housing is provided.

A person's rights are limited to the right to make an application, to have the application recorded and to be given an appropriate level of priority in accordance with the local authority's allocation scheme. The right does not stretch to the actual provision of accommodation.

### The allocations scheme

Local authorities must have an allocations scheme that is published so applicants can assess how their application will be treated. The allocations scheme must explain how people will be prioritised and where they will be placed in the 'waiting list'.

A local authority must comply with the Housing Act 1996, Part VI<sup>17</sup> when allocating social housing. Within this scheme they are given broad discretion in deciding the way to frame their allocation policies.<sup>18</sup> However, once determined they must follow their policy when allocating social housing.

A local authority's housing scheme must give reasonable preference to the following people:<sup>19</sup>

- those who are homeless (including those intentionally homeless or not priority need);
- those occupying insanitary or overcrowded housing or otherwise living in unsatisfactory housing conditions;
- those who need to move on medical or welfare grounds, including those with a disability;
- those who need to move to a particular locality in the district, where failure to do so would result in hardship to themselves or others; and
- those who are in urgent housing need, for example, those suffering from domestic violence.

<sup>15</sup> <http://www.shelter.org.uk/>

<sup>16</sup> <http://www.shelter.org.uk/>

<sup>17</sup> Section 159(1), Housing Act 1996.

<sup>18</sup> Section 159(7), Housing Act 1996.

<sup>19</sup> Section 167(2), Housing Act 1996.

Shelter has highlighted the difficulties that young adults face when trying to access social housing and confirms that: ‘... with the exception of homeless 16- and 17-year-olds and care leavers aged 18 to 20, young people are unlikely to be given priority on local authorities’ waiting lists’ (Diaz 2005, p.4).

When determining priority a scheme may take into account the following factors:

- the applicant’s financial resources available to meet housing needs;
- any behaviour affecting the suitability of the applicant to be a tenant.<sup>20</sup> The test is the same as that applied when determining eligibility (see above);
- any local connection between the applicant and the authority.

A local authority must demonstrate that overall reasonable preference has been granted to those categories listed above over other categories of applicants. However, other factors can be taken into account and local authorities are able to decide how they will give effect to this requirement. Therefore, the importance of reasonable preference should not be overstated as local authorities have very wide discretion when determining how to apply it.

One example of a scheme deemed unlawful by the courts was where the housing authority allocated half of all allocations to homeless people. Within that scheme they then allocated social housing by the date on which the application was made. This was deemed unlawful due to the failure to take into account other factors beyond the date of the application.<sup>21</sup>

#### Right to information

There must be a high level of clarity in the way in which decisions are taken. Authorities must publish a summary of their allocations scheme and provide a copy free of charge to any person on request.<sup>22</sup> The scheme must be available for inspection at the principal office of the authority.<sup>23</sup>

The scheme must ensure that a person has the right to the following information on request:<sup>24</sup>

- general information so the person knows how their application is likely to be treated;
- whether they are likely to be given preference under the scheme;
- whether it is likely that accommodation will be made available;
- if so, the timescale;
- the facts that have been, and/or are likely to be, taken into account in considering whether to allocate accommodation to the person.

An applicant has the right to be notified in writing if they have been given no priority due to unacceptable behaviour, and the grounds for the reason.

#### Eligibility for social housing

Social housing cannot be allocated to people who are ineligible which can be in one of two ways:

<sup>20</sup> Section 167(2B), Housing Act 1996.

<sup>21</sup> *R v Westminster County Council, ex p Al-Khorsan* 33HLR 77, QBD 14 December 1999.

<sup>22</sup> Section 168(1), Housing Act 1996.

<sup>23</sup> A reasonable fee may be charged for providing a copy of the full scheme. Most authorities now also publish the summary and schemes on their website.

<sup>24</sup> Section 167(4A), Housing Act 1996.

- certain people from abroad subject to immigration controls (with a limited number of exceptions) or ineligible for other reasons, for example certain categories of people who are not being habitually resident in the UK;
- people determined to have behaved 'unacceptably'.<sup>25</sup>

If an authority decides that a person is ineligible it must inform the applicant in writing with the reasons for the decision. The applicant has a right for the decision to be reviewed.

#### 'Unacceptable behaviour'

An authority may conclude that a person is unsuitable to be a tenant by reason of his or her behaviour. The behaviour must be such that it would, if the person were a secure tenant, entitle the authority to a possession order.

The relevant grounds are as follows:

1. rent arrears or other breach of tenancy agreement;
2. nuisance and annoyance;
3. domestic violence;
4. neglect causing deterioration of premises;
5. neglect causing deterioration of furniture;
6. obtaining the tenancy by deception;
7. mutual exchange with illegal payment; and
8. inappropriate conduct in non-housing accommodation.

The authority must satisfy itself that it is reasonable for a possession order and that, if the court did grant one, it would not be suspended in accordance with their powers to do so in possession proceedings.

#### Reviews

The applicant has a limited right to request a review of the decision where:

1. a person has no priority or is ineligible due to unacceptable behaviour;
2. a person is ineligible due to being from abroad;
3. the facts of an applicant's case which have been taken into account in considering the application for an allocation are incorrect.

Judicial review is the only recourse to challenge any refusal after a review, or a decision that does not entail a right to request a review.

### **Housing benefit**

People can apply for housing benefit when they are on job seekers allowance, employment support allowance or income support. People with low income, either on

<sup>20</sup> Section 167(2B), Housing Act 1996.

<sup>21</sup> *R v. Westminster County Council, ex p Al-Khorsan* 33HLR 77, QBD 14 December 1999.

<sup>22</sup> Section 168(1), Housing Act 1996.

<sup>23</sup> A reasonable fee may be charged for providing a copy of the full scheme. Most authorities now also publish the summary and schemes on their website.

<sup>24</sup> Section 167(4A), Housing Act 1996.

<sup>25</sup> Section 160A(7)(a) states that unacceptable behaviour is behaviour serious enough to make the application unsuitable to be a tenant of the authority: '(7) A local housing authority may decide that an applicant is to be treated as ineligible for an allocation of housing accommodation by them if they are satisfied that-(a) he, or a member of his household, has been guilty of unacceptable behaviour serious enough to make him unsuitable to be a tenant of the authority; and (b) in the circumstances at the time his application is considered, he is unsuitable to be a tenant of the authority by reason of that behaviour.'

alternative benefits or employed, are also able to apply for housing benefit but may not be entitled to the full amount.

For young adults, there are restrictions on the amount of housing benefit they can claim if they are single and renting from a private landlord. This is called the 'single room rent restriction'. This can often lead to young adults struggling to pay their rent and in rent arrears which can impact on their future accommodation options.

### **Conclusion**

It is clear that the lack of affordable accommodation has a greater detrimental impact on young adults than on any other age group. When considering the difficulties of obtaining accommodation from social services for young adults in combination with the inadequate housing duties towards young adults, it is clear that statutory schemes do not reflect the importance of stable, suitable accommodation for young adults. We would recommend that vulnerable young adults are provided with an entitlement to accommodation and support in the same way that children are.

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# Problem solving, getting help and access to justice

## **Executive Summary**

This chapter will look at the ways young adults, can access their legal entitlements. It will look at:

- The problems for young adults in accessing their entitlements.
- What to be aware of when assisting young adults in getting help.
- What to expect from the system when helping young adults access their entitlements and how to approach this task.
- Making representations to someone senior in the organisation.
- Making a complaint using the complaints systems.
- Taking your complaint to the ombudsman and how ombudsman schemes work.
- Using ‘judicial review’ to deal with an urgent case and challenging unlawful policies.
- Can young people get compensation where they have suffered damage or loss?
- ‘Whistle blowing’ – staff at the frontline challenging institutional bad practice

## **Introduction**

This chapter outlines the remedies available to young people and their supporters to secure the essential entitlements that can give life-enhancing chances.

There is limited research on young adults in terms of whether they seek appropriate advice and, if so, whether that improves their outcomes. The Youth Access report *Young People’s Access to Advice – The Evidence* (Kenrick 2009), concludes that 18 to 24-year-olds are less likely to obtain advice on social welfare problems when compared with the general population. This failure is exacerbated where the young adult is not in employment, education or training, where, despite having the greater need, they are less likely to obtain advice and a remedy to their problems. Obtaining good quality advice from an appropriate adviser is often essential to getting the right services and preserving the young person’s confidence in the system.

## **Knowledge is power**

Those helping young people need to understand and be sensitive to the young person they are seeking to assist. It is essential to understand the young person’s background, needs, previous contact with statutory organisations, mental health, experience of abuse and neglect, their community history, family or friends or other significant people in their lives.

Young people need to understand the system or organisation that is involved. It is essential to understand how to make applications, the criteria for applications, how long things take and what the challenges are to meet the young person’s needs. It is often helpful to research the history of the organisation and its ability to deliver.

Finally, never assume that ‘the decision’ of authorities is always correct when confirming the type and level of the service they have to provide.

## **Asking for help from the authority**

When asking for help or a service it is important that the young person provides as much information as possible. It is vital that the 'urgency' of the request or application is made clear. It is important to be tenacious when asking for help on the basis that if 'you don't ask, you don't get'. The request should have regard to any criteria and focus on the strengths of the application. Despite the frustrations that can be experienced, the young person should be robust and courteous (at all times).

## **Trouble getting the service?**

Those seeking services can experience resistance from statutory or other agencies. Sometimes this can include being threatened and bullied when asserting rights to entitlements. Our case work has evidenced that professionals can be threatened with disciplinary action when seeking services within their own organisations. In some of our cases we have found inter-agency conflicts where one agency may receive complaints from another agency for asking for services on behalf of a young person.

Organisations may have a whistle-blowing policy providing staff an opportunity to vent any concerns without fear of reprisal. Another avenue is signposting young people to advocacy services, rights advisers in law centres or solicitors (usually funded through legal aid). These types of advisers are (or should be) independent from the agency resisting the provision of services.

## **What do you do when the authority refuses to provide a service?**

It should not be assumed that the refusal to provide a service is the correct decision. Sometimes the wrong use of the law or a misunderstanding of the law at 'the frontline' acts as a filter preventing access to life-enhancing (even life-saving) services to some of the most vulnerable and needy people.

But what do you do when you have been refused a service? The 'remedy' used would depend on how urgent or serious the situation is. If the refusal of a service risks making someone homeless or exposing them to a real risk of serious harm then urgent, and possibly legal, action should be taken. While young people should be encouraged to engage with this process, the support of professionals can be critical to successful resolution, especially if legal advice is required.

## **Representations to someone senior in the organisation**

The staff at the 'frontline' do not always receive adequate support, which can cause confusion and frustration between young people and these workers. The initial refusal should be supplied with reasons in writing and should be followed up by a request to speak with a supervisor or team manager for clarification.

If there is an appeals process this should be followed and the timetable for the appeals process carefully monitored. Ideally, the young person should put the appeal or complaint in writing and a copy of that document should be kept safely.

## **The complaints process**

If the matter complained about is urgent then the complaints process is unlikely to be the best remedy to deal with the immediate problem. The young person may want to pursue a complaint about how she or he was treated later on, once the practical needs are resolved. It may be necessary to refer the young person to a legal adviser or solicitor to help with making a complaint.

The first step is to understand the complaints process the young person is dealing with. Get information from the organisation being complained about as the process will be different depending on the type of organisation. The complaints process will be published on a website or available from the organisation.

#### COMPLAINTS AGAINST THE PROBATION SERVICE

Complaints about the probation service would be, in the first instance, lodged with the probation area's chief officer. Within five working days of receiving your letter the chief officer will write to explain how your complaint will be handled. He or she will give the date when you can expect the outcome. If your complaint is about an issue involving the chief officer, you should address your letter to the secretary of your local probation board. You can appeal within 15 working days of receiving the outcome. Write to the secretary of the probation board. Explain why you want to appeal. The secretary will acknowledge your letter within five working days of receiving it. A panel, including at least one board member, will look at your appeal. They may ask to meet you and the investigating officer. The outcome will be sent to you within 20 working days of receipt of the appeal. The panel will let you know if they need longer to make a decision. You can write to the prisons and probation ombudsman within one month of your appeal decision if you have:

- been under the supervision of the national probation service;
- been housed in probation accommodation;
- had a report prepared about you for use by a court.

The second step will be to make a formal complaint or written representations to the authority or body that is responsible for the decision.

For prisoners the complaints process is described in PSO 2510 and provides a strict timetable for responding to complaints. In prison establishments, this should usually be made within three months of the incident. If the prison's response is unsatisfactory, the complaint can be taken to the prisons and probation ombudsman (PPO), an independent investigatory body. This should usually be done within 12 months of the incident, although later complaints may be accepted if the subject matter is serious enough or if there are good reasons for the delay.

'Looked after' children or 'care leavers' can make complaints (or 'representations') about local authority children's services through a detailed process governed by the Children Act 1989. Each local authority will have its own local published policy which should be obtained. A complainant must make representations about a matter no later than one year after the grounds to make the representations arose.<sup>1</sup> Once the complaint is made there is a strict timetable which should be followed. If the young person is unhappy with the outcome of the complaint then they can ask the local government ombudsman to review the complaint. Finally, in certain circumstances the parliamentary and health ombudsman can be asked to investigate the complaint.

#### **Ombudsman schemes**

When a complaint has followed the complete 'complaints process' and the young person is still unhappy then the complaint could be sent to an ombudsman to investigate further.

The ombudsman exists to deal with complaints from ordinary citizens about certain public bodies or private sector services where earlier complaints have not been resolved. There are different ombudsman schemes, which include local government, telecommunications, pensions, financial, energy, housing and prisons and probation. An ombudsman scheme should be independent and have the power to investigate effectively, fairly and have

public accountability. The service is provided free of charge and should be used in the last resort.

All schemes require that complaints must be sent in within a reasonable time and usually there is a fixed time limit.

After conducting an investigation the ombudsman usually issues a written report. This normally sets out the evidence considered by the ombudsman and suggests how the dispute should be resolved. Often the report will also include recommendations about the improvement of procedures or practices for the future.

The ombudsman's job is to consider whether something has been badly or unfairly handled. The investigation will identify unreasonable delay, neglect, inaction, inefficiency, failure to follow policy or proper procedures, unfair discrimination, discourtesy, inconsistency, mistakes of law and giving inaccurate information or advice.

If the complaint is upheld the ombudsman will expect the organisation to provide a suitable remedy. Remedies may include an apology, publicity for the ombudsman's decision, provision of the service desired, putting right what went wrong and (in some cases) financial compensation. In some schemes the ombudsman makes a recommendation which the organisation is expected to follow and usually does. In other schemes there is provision for the ombudsman to make a monetary award which is legally binding on the organisation.

All the ombudsman schemes have a carefully-defined jurisdiction and some types of complaint are excluded. Complaints which are being dealt with or have been dealt with by a court or tribunal are often excluded from ombudsman investigations.

A 'care leaver' brought a complaint about how his local authority had failed to protect him from serious abuse and neglect while living at home with his mother. He alleged that this failure caused his disrupted education and poorer employment prospects. The 'care leaver's' complaint was dealt with through the local authority complaints procedure following the Children Act procedure. His complaint was dismissed at every stage by the local authority internal complaints process and at one stage he was blamed for contributing to his own ends by the investigator. This caused considerable distress to the 'care leaver' but nonetheless, with the support of his advocate, he pursued this complaint to the local government ombudsman scheme. After many months, the ombudsman concluded that the authority had acted wrongly and unfairly to the 'care leaver'. The report made serious criticisms of the authority in the way that the 'care leaver' had been treated both as a 'looked after' child and during the complaints process itself. He received a significant amount of money on trust for the hurt and damage caused.

### **Judicial review**

Where a public body, like a local authority, prison or hospital, acts illegally then it can be challenged in the courts. In urgent cases and where an authority appears to have an unlawful policy, it may be necessary to bring judicial review proceedings. Judicial review is always something that should be done only after all other efforts (subject to the time available) have been made to deal with the problem.

This remedy will require legal advice and representation from a suitably qualified and experienced legal adviser. Judicial review proceedings are begun in the High Court and involve a complicated legal procedure which must be followed to a strict timetable. These proceedings can be expensive and people who bring cases must be careful, because if they lose the case they may be asked to pay the legal costs of the public body.

For people who don't have much money, they may be able to get the help of a publicly-funded solicitor and barrister if there is a good case. The Legal Services Commission organises publicly-funded legal services which is contracted out to private firms of solicitors, law centres, non-governmental organisations and other specialist providers. The legal aid funding available to bring cases to court in these circumstances protect the applicant from having to pay any legal costs of the defendant public authority. A solicitor can advise the young person in more detail about this, but the young person should not be afraid to take a case to court if they are entitled to legal aid.

The judicial review case will usually start with a letter to the public body setting out what the issue is and warning that they may be taken to court if the problem is not sorted out. If this does not work, the next step is to go to court. This must be done within three months of the incident or decision at the latest, so it is important to get legal advice as soon as possible.

If the case is extremely urgent, then judicial review proceedings can be used to prevent something from happening or make something happen to protect the safety and welfare of the young person. This is known as an injunction and can be used effectively in a crisis.

Sonny was a care leaver who was 18 years old and serving a detention and training order. Sonny had behaved well in prison and undertaken all offending behaviour courses available to him. The governor was prepared to grant two months' early release if Sonny had a suitable address to go to and was suitable for 'tagging'. His local authority leaving care team had not visited him in prison and had not provided the youth offending team with an address. Sonny got in touch with the Howard League who contacted the authority but did not receive an appropriate response. His solicitor obtained an injunction from the High Court requiring the authority to provide suitable accommodation in order that Sonny could be released from prison. As a result of the injunction the authority identified accommodation and Sonny was granted two months' early release.

Robert was serving a long sentence and had profound mental health problems which lead to life-threatening self-harm. Robert was regularly taken to hospital for 'emergency' treatment and despite his mental health issues he was not receiving appropriate care and treatment in prison. On one occasion he was admitted to hospital in a coma. The Howard League obtained a psychiatric opinion which confirmed that Robert should be transferred to hospital. The Howard League entered negotiations with both the prison and health authorities with little effect. Eventually judicial review proceedings were commenced and an injunction obtained to keep Robert in hospital until a suitable mental health alternative was identified. As a result Robert was safe until he was transferred to a psychiatric hospital for treatment.

If the parties to the judicial review cannot reach an agreement then the case might need a judge to make a ruling on the law in dispute. The judge will be required to make a judgment explaining the facts of the case and how the law works in the particular case. Sometimes this can change the law and government policy and help other people in a similar situation.

The Howard League represented a young person called Sarah who was seeking the support of her local authority. During the course of the judicial review case it became apparent that the local authority had misunderstood its duties towards young people under the Children Act 1989. The authority had a published policy advising its staff on how to deliver children's services which did not comply with their statutory responsibilities. As a result of the judicial review proceedings the authority changed its policy to all children.

## **Damages claims**

Where a young person has not received a proper service by a public body then in certain circumstances the young person can bring a monetary claim for the harm or damage caused by the unlawful action. These cases are complex and will always require the advice and assistance of a specialist solicitor.

Young people may have a 'damages claim' where they have been unlawfully restrained by prison officers, have been exposed to abuse and neglect at home when social services should have protected them, or where they are illegally detained in prison when they should have been released. If a young person thinks they have a claim then they should get advice quickly as there are strict time limits for bringing a claim.

Claims for breaches of the Human Rights Act must be brought within a year of the incident. Claims for personal injury (resulting from either negligence or assault) must be brought within three years, and other claims (such as for false imprisonment or misfeasance in public office) must be brought within six years.

Our legal team does not deal with damages claims but can help by finding a solicitor who does.

## **'Whistle blowing' – the Public Interest Disclosure Act 2003 (PIDA)**

For people working on the frontline of services, there is a lot of pressure to deliver services and not to complain. It can take considerable courage and resilience to challenge 'the system' when it is failing. Our legal team regularly comes into contact with professionals who are frustrated and demoralised by services not matching their statutory expectations.

The official name for whistle blowing is 'making a disclosure in the public interest'. It is more commonly called 'blowing the whistle' or 'whistle blowing'. It means that if you believe there is wrongdoing in your workplace you can report this by following the correct processes, and your employment rights are protected. Whistle blowers should be protected for the public interest, to encourage people to speak out if they find malpractice in an organisation or workplace. Malpractice could be improper, illegal or negligent behaviour by anyone in the workplace.

If you are considering 'whistle blowing' you should certainly seek legal advice and the support of a trade union or other professional body.

## **Reforms to publicly funded legal services**

The Legal Services Commission regulates and controls the provision of publicly-funded legal services. Solicitors and advisers are contracted by the Commission to deliver legal advice and representation in criminal and civil cases in England and Wales. Most of the clients and cases taken by the Howard League's legal team have been funded by the Legal Services Commission enabling our young clients to ensure that they are treated properly and have access to services to help them in custody and the community.

The provision of legal services by the State is under considerable pressure and there are numerous proposed reforms. Regrettably the reforms may exclude certain types of people and cases from access to legal advice and representation. At the time of publication of this document, there remains considerable anxiety about the future of public funding for judicial review, damages claims and other legal advice areas.

# **YOUNG, ADULT AND NO SUPPORT:**

## The entitlements of young adults to care in the community

### **CONCLUSION**

The Howard League welcomes the growing awareness of the needs of vulnerable young adults. The leaving care statutory framework recognises that young adults need ongoing support especially if coming from a background of 'care'. Barrow Cadbury's T2A Alliance brings together a coalition of academics, campaigning organisations and practitioners to highlight the ongoing neglect of these young people who need and deserve better understanding of their vulnerabilities and for better age-appropriate services.

In 2007, the government set out one of its top 30 targets to increase the proportion of socially excluded adults in homes and jobs'. One of the four 'at risk' groups on which this target focuses is care leavers at 19 years old. The Social Exclusion Unit's report on the needs of young adults found 'there are relatively few examples of public services that address the needs of 16 to 25 year olds in the round or ensure an effective transition from youth services to adult services' (Social Exclusion Unit 2005, p.8).

The Howard League's legal team's experience illustrates the inadequate application of duties towards this age group. Our work shows a lack of understanding and sympathy towards these young people and that vulnerable young adults are disadvantaged by a lack of suitable support and accommodation. Drawing from this experience, we would make the following recommendations.

### **Recommendations:**

1. We recommend that the current approach of social services support to young adults is reviewed and a new system introduced that reflects the position of vulnerable young adults in their 'transition to adulthood'. Vulnerable young adults often lack the emotional and practical support that other young people can rely on. The new system should place a duty upon local authorities (as for children) to provide suitable accommodation and support for young adults.
2. We recommend that all young adults in need of support and assistance from social services are entitled to an assessment of their needs in the same way that children are. This assessment should lead to the provision of services suitable for young adults and not be dependent on previous assistance from social services. This assessment should differ from the current 'vulnerable' adult assessment by recognising the specific difficulties and vulnerabilities of this stage in a person's life.
3. We recommend that the value placed upon the welfare role of a social worker, personal adviser or other suitable professional is reflected in the provision of support to vulnerable young adults. Out for Good (Howard League 2006) highlights that social services support can be key to enabling young adults with criminal convictions move away from a view of themselves as 'offenders'.

4. We recommend that all young adults are granted 'priority need' status when homeless due to their age without the need for further consideration of their vulnerability.
5. We recommend that all young adults leaving prison are granted 'priority need' status if homeless on release.
6. We recommend that in all prison establishments holding young adults, there are dedicated social workers who have a duty to assess a young adult's needs prior to release from prison and to liaise with the young adult's home social services to ensure that a suitable package of accommodation and support is available on release from prison.
7. We recommend that all professionals, including prison officers, probation officers and housing officers, in contact with young adults are trained and encouraged to make referrals to housing or social services for vulnerable young adults.
8. We recommend that there is national guidance on the resettlement of young adults from custody.
9. We recommend that there is better joined-up working between all agencies involved with young adults, including children and adult social services, the probation service, YOTs and health services.

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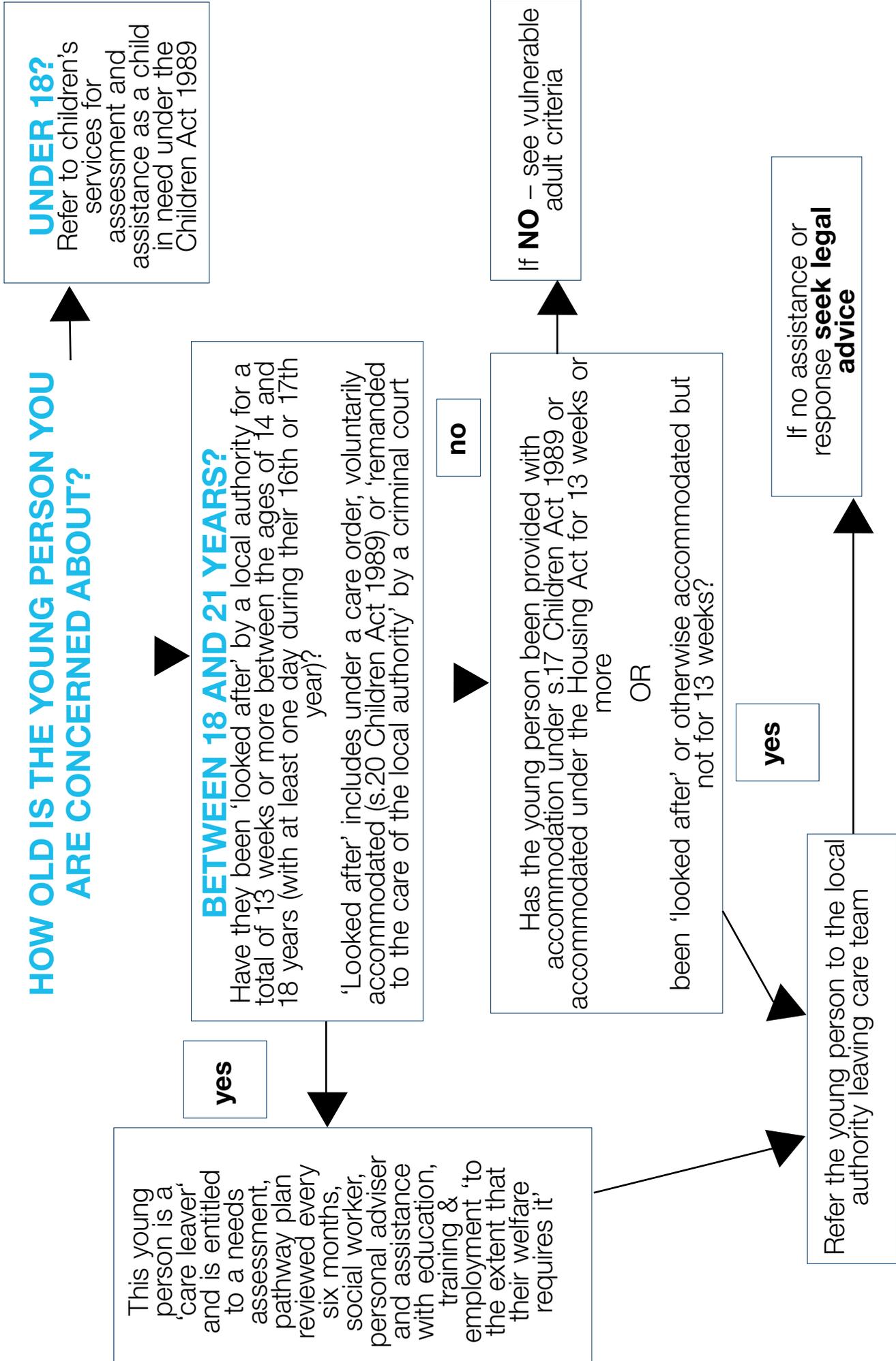
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# HOW OLD IS THE YOUNG PERSON YOU ARE CONCERNED ABOUT?



## UNDER 18?

Refer to children's services for assessment and assistance as a child in need under the Children Act 1989

## BETWEEN 18 AND 21 YEARS?

Have they been 'looked after' by a local authority for a total of 13 weeks or more between the ages of 14 and 18 years (with at least one day during their 16th or 17th year)?

'Looked after' includes under a care order, voluntarily accommodated (s.20 Children Act 1989) or 'remanded to the care of the local authority' by a criminal court

no

Has the young person been provided with accommodation under s.17 Children Act 1989 or accommodated under the Housing Act for 13 weeks or more OR been 'looked after' or otherwise accommodated but not for 13 weeks?

yes

Refer the young person to the local authority leaving care team

If **NO** - see vulnerable adult criteria

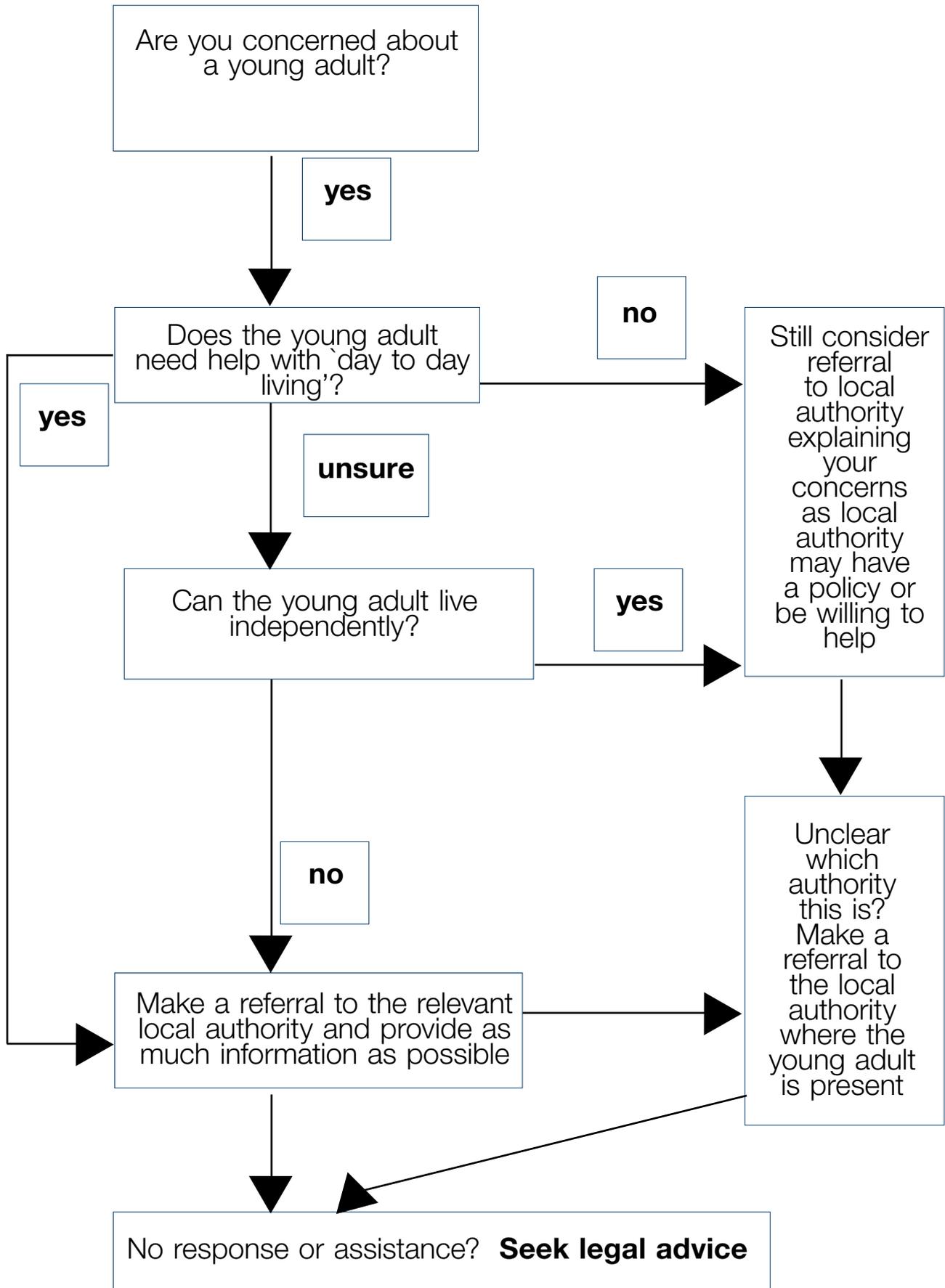
If no assistance or response **seek legal advice**

yes

This young person is a 'care leaver' and is entitled to a needs assessment, pathway plan reviewed every six months, social worker, personal adviser and assistance with education, training & employment 'to the extent that their welfare requires it'



# PRACTITIONERS GUIDE – VULNERABLE YOUNG ADULTS NEEDING SUPPORT IN THE COMMUNITY





The Howard League for Penal Reform works for a safe society where fewer people are victims of crime

The Howard League for Penal Reform believes that offenders must make amends for what they have done and change their lives

The Howard League for Penal Reform believes that community sentences make a person take responsibility and live a law-abiding life in the community

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**the Howard League for Penal Reform**

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