

YOUNG MINDS

The voice for young people's mental health and wellbeing

Transitions in Mental Health Care

A guide for health and social care professionals on the legal framework for the care, treatment and support of young people with emotional and psychological problems during their transition years

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Contents

Executive Summary	4
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Chapter 1 Introduction	6
Focus of this guide	7
Context	7
The importance of safeguarding	8
Terminology	8
Complexity of needs and agencies involved in young people's care	9
Responsibility of Directors of Adult Social Services and Children's Services	9
Statutory duties unaffected by local arrangements	10
Importance of keeping up to date with legal and policy development	10

Chapter 2 General Principles and Key Concepts	12
Human Rights and Equality	13
General Duties of NHS Bodies and Local Authorities	14
Transition: The Key Role of NHS Bodies and Local Authorities	14
Care Planning and Assessment: a range of systems	18
Confidentiality, Sharing Information and Decision-making	20
The importance of involving young people	20
Complaints procedures	22

Chapter 3 The Statutory Framework for the Provision of Services & Support	24
Overview of the Responsibilities of NHS Bodies	25
Access to Health and Social Care: Children and Young People	27
Access to Health and Social Care: Individuals aged 18 or Over	34
Section 117 Mental Health Act 1983	38
Carers' assessments	41
Direct Payments and Personal Budgets	41
Looked After Children	42

Chapter 4 Transition in Practice	46
Case Study 1: Ann	47
Case Study 2: Vicky	50
Case Study 3: John	53
Case study 4: Sunita	54
Case Study 5: Tanay	59
Case study 6: Parsa	63
Case Study 7: Patrick	66
Case study 8: Sandy	67

Annex 1	70
Services to support the care and treatment of children and young people: An overview of relevant legislation	70

Annex 2	78
Homeless Young People: Local Authority Responsibilities	78

Annex 3	79
Glossary	79

Annex 4	81
Resources Section and Further Reading	81



Executive Summary



i. This guide is for health and social care professionals working with young people with emotional and psychological problems who are receiving care and support from child and adolescent mental health services (CAMHS) but have reached an age where they will need to move on to adult services.

ii. The purpose of this guide is to help practitioners understand the scope and purpose of the legislation, policy and guidance relevant to health and social care, and how such law and policy applies to the young people they are seeking to support. It is concerned with practice in England (in some of the areas considered different laws apply in Wales).

iii. While seeking to provide a clear explanation of the law, this guide is not a substitute for referring to the relevant legislation, guidance and policies or seeking legal advice. This is particularly important given that the area of health and social care is subject to frequent change.

Arrangement of this Guide

iv. Chapters 1 – 4 cover the following issues:

- **Introduction (Chapter 1):** explains the focus of the guide, highlights that the period of transition from childhood to adulthood is recognised as being difficult and stressful for many young people and outlines the broad legal and policy context within which this guide is written.
- **General Principles and Key Concepts (Chapter 2):** highlights the key principles and concepts that will be relevant to decisions concerning young people's health and social care as they move from CAMHS to adult services, such as human rights and equality, the general duties on NHS bodies and local authorities, and the importance of involving young people in their care.
- **The Statutory Framework for the Provision of Services & Support (Chapter 3):** provides an overview of the health and social care legislation and guidance that is relevant to the assessment of the needs of young people with a mental disorder and decision on what, if any, services are to be provided for such needs.

- **Transition in Practice (Chapter 4):** considers aspects of the transition process that may present particular concerns or difficulties. It does so by setting out eight different scenarios concerning young people in need of mental health care and suggesting how the issues raised by these cases should be addressed.

v. There are four Annexes. These cover the following areas:

- **Annex 1:** Services to support the care and treatment of children and young people: An overview of relevant legislation
- **Annex 2:** Homeless Young People: Local Authority Responsibilities
- **Annex 3:** Glossary
- **Annex 4:** Resources Section and Further Reading

Note on tables used in this guide

vi. The guide includes tables summarising the relevant law. These are designed to provide an overview of the particular issue being considered and should be read in conjunction with the relevant explanatory text.



Introduction



1.1 This guide is for health and social care professionals working with young people with emotional and psychological problems (also referred to as ‘mental health problems’) who are receiving care and support from child and adolescent mental health services (CAMHS) but have reached an age where they will need to move on to adult services.

1.2 Ensuring a smooth transition for young people with mental health problems from CAMHS to services able to provide them with the care and support that they need as they move into adulthood, will be dependent on effective joint working between all the relevant agencies. This in turn requires that professionals working within these different agencies have a good understanding of each other's roles and responsibilities in relation to these young people.

1.3 This guide seeks to assist such joint working by providing an overview of the legal framework relevant to the provision of health and social care by both children and adults' services. Its purpose is to help practitioners understand the scope and purpose of the legislation, policy and guidance relevant to health and social care, and how such law and policy applies to the young people they are seeking to support.

1.4 This guide is concerned with practice in England (in some of the areas considered, different laws apply in Wales).

1.6 Accordingly, given the importance of education, one of the case studies in Chapter 4, concerns a young person with special educational needs and provides further information on this area. Accommodation is another key issue. The duties to provide accommodation under the Children Act 1989 ('the CA 1989') are considered in the guide and Annex 2 provides information on guidance relating to 16 and 17 year olds who are homeless.

1.7 The age range of individuals covered in this guide will be 16 – 24. This reflects the provisions of relevant legislation. For example, the Children (Leaving Care) Act 2000 amended the CA 1989, in order to set out the circumstances in which local authorities must provide support to care leavers from the age of 16 to 21 and in some circumstances the provision of support is extended to the age of 24 or beyond.¹ It also reflects differing practice across England, where such transitions may occur between the ages of 16 and 18, depending on local practice.

Context

1.8 The period in which young people move into adulthood, 'the transition years' is recognised as being difficult and stressful for many young people. This was a key finding of the National CAMHS Review, which was established by the previous government in December 2007 to consider how services were meeting the needs of children and young people at risk of, and experiencing, mental health problems and how services could be improved. The review's report, Children and Young People in Mind found that the transition from CAMHS to adult mental health services 'caused children, their families and service providers most concern'²

Focus of this guide

1.5 The focus of this guide is on law and policy relevant to the provision of health and social care. However, young people with mental health problems are likely to have a range of needs, including housing, education and welfare benefits. While health and social care professionals are not expected to have a detailed knowledge of the law and policy relevant to all areas in which young people may require support, they should be able to refer the young person to relevant agencies and colleagues with the relevant expertise.

¹ See 'Looked After Children' below'.

² National CAMHS Review, 18th November 2008, page 83

1.9 In its response to this review, the Government acknowledged:

'The transition from CAMHS to adult mental health services is a critical point for young people with complex needs'³

1.10 The Department of Health has highlighted the need for a 'coordinated multi-agency approach' to transition planning. In addition:

'Successful transition depends on early and effective planning, putting the young person at the centre of the process to help them prepare for transfer to adult services. The process of transition should start while the child is still in contact with children's services and may, subject to the needs of the young person, continue for a number of years after the transfer to adult services. This will ensure that young people and parents know about the opportunities and choices available and the range of support they may need to access.'⁴

1.11 A range of guidance has been issued to support the transition process for young people moving from children's services to adult services. The key documents for young people with mental health problems are referred to in Chapter 2 below. This guide is intended to complement such publications. Details of these, and other useful publications on transition, are set out in the resources section in Annex 4.

The importance of safeguarding

1.12 The Children Act 2004 ('the CA 2004') places a duty on all agencies to safeguard and promote the welfare of children and young people. The policy and legislation relevant to safeguarding children and young people is beyond the scope of this guide. However, practitioners will need to take this into account when working with all individuals under 18. Resources on safeguarding are included in Annex 4.

Terminology

1.13 Given its focus, for the purposes of this guide, the term 'young people' will refer to individuals aged 16 – 24 years of age. Although the CA 1989 defines a child as a person under the age of 18, this guide will adopt the terminology used by the Code of Practice to the Mental Health Act 1983 ('the MHA Code') and refer to 'child' or 'children' when referring to those aged under 16. It is important to note that there are specific provisions relevant to young people aged 16 – 17. The guide will explain such provisions where they apply.

1.14 The terms 'emotional and psychological problems' and mental health problems covers a wide range of conditions, such as behavioural and emotional disorders, depression, eating disorders, post-traumatic stress disorder and delusional disorders. This guide will also use the term 'mental disorder'. This is because the legislation relevant to the assessment and provision of health and social care refers to individuals with a 'mental disorder'. This is a very broad term. It is defined in section 1 of the Mental Health Act 1983 ('the MHA 1983') as: 'any disorder or disability of the mind'.⁵

³ Keeping Children and Young People in Mind – The Government's full response to the independent review of CAMHS, 7th January 2010

⁴ Prioritising need in the context of Putting People First: a whole system approach to eligibility for social care - guidance on eligibility criteria for adult social care, 25th February 2010, paragraph 138.

⁵ The term 'mental disorder' includes learning disabilities. However see section 1(2A) of the MHA 1983 which provides for the circumstances in which a person's learning disabilities must also be associated with 'abnormally aggressive or seriously irresponsible conduct', e.g. admission to hospital under section 3 of the MHA 1983. See Chapter 3 of the MHA Code for further information on the conditions covered by the term 'mental disorder'.

1.15 This guide adopts the approach taken by the National CAMHS Review and uses the term 'CAMHS' when referring to those services that have a specific remit to provide mental health care for children and young people by trained mental health professionals and practitioners, and their families. The National CAMHS Review noted that although these are referred to as Tier 2, 3 and 4 CAMHS in the CAMHS Standard of the National Service Framework for Children, Young People and Maternity Services, CAMHS services are now using the terms targeted, specialist and highly specialist services respectively.⁶

Complexity of needs and agencies involved in young people's care

1.16 Young people receiving support from CAMHS will have wide ranging needs, for example, some may have learning disabilities in addition to mental health problems, some may benefit from support provided by community-based services, while others may require a period of in-patient care. Some may need accommodation, support in gaining employment and/or education and training. Some may be parents and/or carers. Young people will also come from diverse backgrounds, cultures and experience; some may be seeking asylum (with or without their families), others may have a whole range of difficulties such as having spent some time in the youth justice system, while some may have been sexually abused and others are, for various reasons, moving from one location to another on a frequent basis.

1.17 In the existing system of care there is a multiplicity of different organisations involved with young people during their transition years. Examples of these are set out below. However, given the proposals for substantial reform (such as the abolition of Primary Care Trusts ('PCTs') practitioners will need to ensure that they are up to date with the roles and responsibilities of the relevant agencies:

- Local authorities: will deliver and commission services to children and young people under the age of 18 with mental health problems via children's social care services and to individuals aged 18 and over through adult social care services (including mental health services).
- NHS bodies: PCTs, NHS Trusts and NHS Foundation Trusts will deliver or commission health services (including mental health services).
- CAMHS and adult mental health services: will comprise of professionals from local authorities and NHS bodies.
- Other agencies: such as the police, probation service, education, the voluntary sector and youth justice will also be involved.

Responsibility of Directors of Adult Social Services and Children's Services

1.18 Within local authorities, adult social care falls within the responsibility of the Director of Adult Social Services⁷ and the responsibility for children's social services (and education) falls within the responsibility of the Director of Children's Services.⁸ These statutory roles are distinct, even if one person holds both positions.

1.19 These two Directors are expected to work together 'to ensure a collaborative approach to the interface between social services for children and social services for adults on the range of issues' and this should include developing an integrated approach to mental health services. The Director of Adult Social Services is responsible for the 'transition of service users... between children's and adult's services'.⁹

⁶ CAMHS National Review, 18th November 2008, page 16

⁷ Section 6 of the Local Authority Social Services Act 1970

⁸ Section 18 of the Children Act 2004

⁹ Department of Health, Best Practice Guidance on the role of the Director of Adult Social Services, May 2006, paragraph 40

Statutory duties unaffected by local arrangements

1.20 The local arrangements for the provision of health and social care by the various agencies may differ across the country, with a wide variety of policies, protocols, assessment arrangements and eligibility criteria. However, the statutory duties in relation to the assessment of individuals' needs, outlined in Chapter 3 of this guide, will not be affected by such local variation.

Importance of keeping up to date with legal and policy development

1.21 The law relating to the provision of health and social care is complex, particularly in the period of transition from children's services to adult services. While this guide seeks to provide a clear explanation of the law, it is not a substitute for referring to the relevant legislation, guidance and policies or seeking legal advice. This is particularly important given that the area of health and social care is subject to frequent change. For example, significant changes have been proposed in the Health and Social Care Bill 2011, following the Government's White Paper, Equity and excellence: Liberating the NHS, such as the abolition of PCTs and Strategic Health Authorities.¹⁰

¹⁰ Cm7881, Department of Health, 12th July 2010





General Principles and Key Concepts



2.1 This chapter highlights key principles and concepts that will be relevant to decisions concerning young people's health and social care as they move from CAMHS to adult services.

The areas covered in this chapter are as follows:

- Human rights and equality
- General duties on NHS bodies and local authorities
- Transition: the key role of NHS bodies and local authorities
- Care planning and assessments
- Confidentiality, sharing information and decision-making
- The importance of involving young people in their care
- Complaints procedures

Human Rights and Equality

2.2 Those responsible for the care and treatment of people with mental health problems, of any age, should ensure that they are familiar with the Human Rights Act 1998 ('the HRA 1998') and the Equality Act 2010.

2.3 This is because the HRA 1998 places an obligation on public bodies to work in accordance with the rights set out in the European Convention on Human Rights ('the ECHR'). This means that individuals working for public authorities, whether in the delivery of services to the public, or devising policies and procedures, must ensure that they take into account ECHR rights when carrying out their day to day work.

2.4 In some cases individuals will be considered to be public authorities for the purpose of the HRA 1998. For example, individuals carrying out statutory functions under the MHA 1983, such as Responsible Clinicians (RCs) and Approved Mental Health Professionals (AMHPs) will be considered to be public authorities for the purpose of the HRA 1998. This also applies to such individuals when working within the private sector, for example an RC working in a private hospital exercising functions under the MHA 1983.

2.5 The Equality Act 2010 requires public bodies¹¹ and anyone else carrying out public functions, to comply with the public sector duty which is expected to come into force from April 2011. The general duty requires public bodies to eliminate discrimination, promote equality of opportunity and develop good relations between people. Some public bodies will also be required to comply with the specific public sector duties.¹²

2.6 Service providers and those carrying out public functions also have duties not to discriminate against individuals; these duties are explained in Annex 1. The duties in respect of education providers are described briefly in the commentary to the case of Tanay in Chapter 4.

2.7 The obligations under the human rights and equality legislation will apply to all aspects of the statutory functions of NHS bodies and local authorities, including decisions concerning the planning, commissioning and provision of mental health care. For example, in relation to local social service authorities, the Department of Health states:

*'Equality should be integral to the way in which social care is prioritised and delivered, allowing people to enjoy quality of life and to be treated with dignity and respect.'*¹³

2.8 For those working with children and young people with mental health problems, the MHA Code states that professionals should also be aware of the United Nations Convention on the Rights of the Child ('the UNCRC').¹⁴ The UNCRC includes the right of a child to be heard in any relevant legal or administrative proceedings (Article 12) and the rights of disabled children to education, training, health care services, rehabilitation services, preparation for employment, recreation (Article 23).¹⁵

2.9 Further information on human rights and equality legislation is set out in Annex 1.

¹¹ See Schedule 19 of the Equality Act 2010

¹² The Government has been consulting on the nature of the specific duties.

¹³ Department of Health, Prioritising need in the context of Putting People First: a whole system approach to eligibility for social care

- guidance on eligibility criteria for adult social care, 25th February 2010, paragraphs 90-91

¹⁴ Department of Health, Code of Practice to the Mental Health Act 1983 ('the MHA Code') TSO, 2008 paragraph 36.3.

¹⁵ For further information on the UNCRC see: www.unicef.org/crc/

General Duties of NHS Bodies and Local Authorities

Compliance with public law duties

2.10 In addition to their responsibilities under the HRA 1998 and the Equality Act 2010, when exercising their statutory functions, NHS bodies and local authorities must comply with their general public law duties. Not only must they ensure that they act within their legal powers, but they must also act rationally, with sound reasons for the decisions that they take. Best practice is that such reasons should be set out in writing so that they can be demonstrated if challenged.

Duties to co-operate

2.11 There are various obligations on NHS bodies and local authorities to co-operate. For example:

- **Section 82 of the NHS Act 2006** provides: 'In exercising their respective functions NHS bodies (on the one hand) and local authorities (on the other) must co-operate with one another in order to secure and advance the health and welfare of the people of England and Wales.'
- **Section 27 of the CA 1989:** places a specific duty on local authorities and other authorities to co-operate in the interests of children in need (discussed in more detail in Chapter 3).
- **Section 322 of the Education Act 1996:** places a duty on health authorities and local authorities to assist another local authority that requests help in the exercise of their functions in relation to children with special educational needs.
- **Section 10 of the Children Act 2004:** requires local authorities and key partner agencies (including those Strategic Health Authorities and PCTs that are responsible for any area falling within the local authority's boundaries) to co-operate in order to improve the well-being of children in that area.

Transition: The Key Role of NHS Bodies and Local Authorities

2.12 A range of policies emphasise the need for health and social care agencies to work together to plan for the transition of young people from children's services to adult services. These are discussed below.

Healthy Lives, Healthy People; Our Strategy for Public Health

2.13 The White Paper, Healthy Lives, Healthy People; Our Strategy for Public Health, published in November 2010¹⁶ sets out the Government's vision to improve public health. As well as detailing structural change, the White Paper demonstrates continuing commitment to developing a coherent approach to key transitions, instead of tackling issues in isolation. In particular, the Government intends that as young people move through their teenage years and make the transition into adulthood, they are helped to strengthen their ability to take control of their lives, within clear boundaries, and help reduce their susceptibility to harmful influences. In addition, young people should have access to services they trust.

No health without mental health

2.14 The cross Governmental Mental Health Strategy published in February 2011 promotes a life course approach to mental health, supporting early intervention in children and teenagers. The strategy states:

'Careful planning of the transfer of care between services will prevent arbitrary discontinuities in care as people reach key transitions. Services can improve transitions, including from child and adolescent mental health services into adult mental health services, or back to primary care, by:

- Planning for transition early, listening to young people and improving their self efficacy;

¹⁶ Department of Health, 30th November 2010

- Providing appropriate and sensible advice so that young people can exercise choice effectively and participate in decisions about which adult and other services they receive; and
- Focusing on outcomes and improving joint commissioning, to promote flexible services based on developmental needs¹⁷

2.15 The NHS Outcomes Framework will be underpinned by Quality Standards developed by the National Institute for Health and Clinical Excellence (NICE). The Government is considering how Quality Standards developed for the life course might reflect some of the overarching quality and experience themes, including transitions that relate to children and young people's health services. The accompanying document to the Strategy, Delivering better mental health outcomes for people of all ages, sets out six objectives to improve mental health. Objective IV is 'More people will have a positive experience of care and support'. There is a focus on improving the experience of care for children and young people with an emphasis on the 'particular importance' of effective transition from children's to adults' services.¹⁸

The National Service Framework for Children, Young People and Maternity Services

2.16 Although the National Service Framework (the NSF) no longer forms part of the Government's health policy, the aspirations set out in the NSF remain part of its overall policy objectives. For this reason the guide sets out below points referred to in the NSF that are of particular relevance to transition.

2.17 Standard 4 of the NHS of the National Service Framework for Children, Young People and Maternity Services ('the NSF for Children') states that 'All young people have access to age-appropriate services which are responsive to their specific needs as they grow into adulthood.' In relation to mental health, Standard 4 highlights the importance of 'ensuring the smooth

transition of care for young people from child and adolescent mental health services to services for adults'. It adds:

'When the mental health care of a young person is transferred to services for working age adults, a joint review of the young person's needs must be undertaken to ensure that effective handover of care takes place. This should be incorporated into a care plan under the Care Planning Approach arrangements for adult services'¹⁹

2.18 Standard 4 sets out a range of actions that need to be taken by NHS bodies and partner organisations. These include:

- PCTs, Local Authorities and Connexions have agreed protocols detailing roles and responsibilities for co-ordinating transition process including schools, children and adults social services and health teams. This includes addressing their social and emotional needs as well as assisting with their educational career development.
- All transition processes are planned and focused around preparation of the young person rather than the service organisation.
- Young People and their families are actively involved in transition planning.
- Policies on health services for young people are developed between agencies as appropriate, and ensure that:
 - Young people are not transferred fully to adult services until the supports are in place to enable them to function in an adult service;
 - Individual disciplines have clear good practice protocols for the management of young people's health during transfer to adult care;
 - General Practitioners are fully involved; and
 - Joint audit of local transitional arrangements is undertaken.
- Young people in the 16-18 age group with mental health problems can access specific

¹⁷ Department of Health, No health without mental health, February 2011

¹⁸ Department of Health, No health without mental health, Delivering better mental health outcomes for people of all ages February 2011

¹⁹ Standard 4 of the National Service Framework for Children, Young People and Maternity Services, paragraph 6.9

services including adolescent mental health services, linking to specialist drug and alcohol services, early intervention (in psychosis) teams and Youth Offending Teams (YOTs).

2.19 Standard 9 of the Children’s NSF – The Mental Health and Psychological Well-being of Children and Young People (‘the CAMHS Standard’) states:

‘Services ensure that young people experience a smooth transition of care between child and adult services and protocols are in place to ensure a flexible and organised approach is taken and that a developmental perspective is incorporated into staff training.’²⁰

The Care Programme Approach

2.20 The CAMHS Standard 9 of the Children’s NSF identifies two situations when, to ensure ‘their continuity of care’, the Care Planning Approach (‘the CPA’) should be used for individuals aged under 18:

- When children and young people are discharged from in-patient services²¹ into the community; and
- When young people are transferred from child to adult services.

2.21 The Department of Health’s ‘Refocusing the Care Programme Approach: Policy and Positive Practice Guidance’ (‘Refocusing the CPA’)²³ makes the following points:

- It is vital that local protocols are used to agree which system, co-ordinator, or person is in the lead in the overall care of a child or young person.
- Where care is shared across agencies it must be clear who takes the lead on which areas - this is especially important for children and young people who may have a Lead Professional appointed across agencies.

- If the question of who takes the lead is not clarified, the risk is that professionals might assume that others are taking responsibility e.g. for child protection or mental health, when they are not.

2.22 Refocusing the CPA also emphasises the importance of developing a care plan, based on the assessment of need, and subject to regular review. The frequency of the review is one of the areas that are likely to be adapted when applying the CPA to children and young people.²⁴ For example:

- The CPA reviews for children and young people may need to be more frequent than for adults. This is because the needs of children and young people will ‘vary and change over time to a possibly greater extent than adults’. In particular the educational needs of children and young people will change and will therefore need to be reviewed.
- The need to ensure that the child or young person’s family are involved in the care plan decision making process and have a good quality relationship with the care co-ordinator (this is the person who co-ordinates the delivery of the care plan and ensure that it is respected by all those involved in delivering it).
- Given that CAMHS typically works from a family centred orientation rather than a person centred approach, care must be taken to ensure all relevant family members are included, as appropriate to the child or young person’s age, developmental level and taking into account their choice.

2.23 In order to ensure continuity of care, the care coordinator should follow the transition protocols at their Trust for CAMHS to adult services.

²⁰ Standard 9, The Mental Health and Psychological Well-being of Children and Young People, page 22

²¹ The use of the CPA to help improve continuity of care for children and young people with complex health problems was also noted in HM Government’s Healthy Children, Safer Communities A strategy to promote the health and well-being of children and young people in contact with the youth justice system, December 2009, 52

²² Department of Health, October 2004, Markers of Good Practice (10), page 5

²³ Department of Health, March 2008, at page 47

²⁴ Refocusing the CPA’, pages 47–48

Moving on well

2.24 Moving on well: A good practice guide for health professionals and their partners on transition planning for young people with complex health needs or a disability²⁵ highlights the importance of early planning for transition and the need to prepare a 'health transition plan'. This plan includes an action plan to meet the needs identified by the young person, in discussion with health professionals, in preparation for moving into adult healthcare provision.

The National Framework for Children and Young People's Continuing Care

2.25 The National Framework for Children and Young People's Continuing Care ('the National Framework') refers to PCTs'²⁶ duties in relation to transition of young people from children to adult health care, stating that all PCTs should ensure that:

- They are actively involved in the strategic development and oversight of their local transition planning processes with their partners.
- Their representation includes those who understand and can represent adult NHS continuing healthcare.
- Adult NHS continuing healthcare is appropriately represented in all transition planning meetings regarding individual young people wherever the individual's needs suggest that there may be potential eligibility.

2.26 Furthermore the National Framework states that:

- PCTs and local authorities should have systems in place to ensure that appropriate referrals are made when either organisation is supporting a young person who may have a need for services from the other agency on reaching adulthood.
- Future entitlement to adult NHS continuing healthcare should be clarified at as early a stage as possible in the transition planning process, especially when the young person's needs are likely to remain at a similar level until adulthood.

2.27 Where a young person is receiving support via a placement outside of the PCT's area, the National Framework emphasises that:

- There should be clear agreement between all relevant PCTs at an early stage in the transition planning process as to who the responsible commissioner presently is, and to any potential future changes to the arrangement. (This should be determined by applying the principles set out in the Who Pays? Establishing the responsible commissioner' ('the Responsible Commissioner guidance'), which is discussed below.)
- All PCTs with present or future responsibilities should be actively represented in the transition planning process. A dispute or lack of clarity over commissioner responsibilities should not lead to a lack of appropriate input in the transition process.

2.28 In relation to continuing care, the National Framework²⁷ highlights the following points:

- Children's continuing care teams should identify those young people for whom it is likely that adult NHS continuing healthcare will be necessary and notify the relevant PCT who will hold adult responsibility for them.
- Such young people should be identified when they reach the age of 14.
- This should be followed up by a formal referral for screening at age 16 to the adult NHS continuing healthcare team at the relevant PCT.
- By the age of 17, an individual's eligibility for adult NHS continuing healthcare should be decided in principle by the relevant PCT in order that, where applicable, effective packages of care can be commissioned in time for the individual's 18th birthday (or a later date if it is jointly agreed that it is more appropriate for responsibility to transfer at that time).
- Where needs may change, it may be appropriate to make a provisional decision and then re-check it through repeating the process as adulthood approaches.

²⁵ Department of Health, 19 March 2008

²⁶ Department of Health, March 2010'. See 2.8 Transition from child to adult services (paragraphs 78 – 92).

²⁷ See paragraphs 83-86

- Entitlement for adult NHS continuing healthcare should initially be established through use of the decision-making process set out in the National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care.²⁸
- No services or funding should be withdrawn unless a full assessment has been carried out in respect of need for adult health and social care services, including funding responsibilities.

Implementing Fulfilling and Rewarding Lives

2.29 On 12th December 2010, the Department of Health published, *Implementing Fulfilling and Rewarding Lives: Statutory guidance for local authorities and NHS organisations to support implementation of the autism strategy*.²⁹ This is statutory guidance issued to local authorities, NHS bodies and NHS Foundation Trusts under section 2 of the Autism Act 2009.

2.30 The purpose of the guidance is to secure the implementation of 'Fulfilling and Rewarding Lives: The strategy for adults with autism in England' by giving guidance to local authorities, NHS bodies and NHS Foundation Trusts around training of staff, the diagnosis of autism and the leadership and planning of services. The aim of the guidance is to help these bodies to develop services that support and meet the locally identified needs of people with autism and their families and carers.

2.31 Section C of this guidance is focused on transition planning for young people with autism. It states:

'Professionals working with a young person with autism approaching transition, including child and adolescent mental health services (CAMHS) professionals, special educational needs co-ordinators (SENCOs) and social workers should inform the parent and young person of their right to a community care assessment and inform carers of the right to a carer's assessment.

NHS bodies and NHS Foundation Trusts should ensure that protocols are in place in every local

area for the transition of clinical mental health care for children with autism in receipt of CAMHS. Where individuals do not fulfil referral criteria for adult mental health teams, it would be good practice for local authorities and NHS bodies to signpost on to other sources of support and information available locally and nationally.'

Care Planning and Assessment: a range of systems

2.32 The National CAMHS Review, noted that there 'are numerous assessment and planning systems for individual children and young people across children's services' such as the Common Assessment Framework ('the CAF'), the Care Programme Approach ('the CPA'), the Framework for Assessment of Children in Need and their Families ('the Assessment Framework'), the SEN Code of Practice and the ASSET assessment used by YOTs [Youth Offending Teams]'.³⁰

*'This is complicated and can lead to the impression that more effort is being expended on assessment and "ticking the boxes" than on helping the child or young person to address their needs'*³⁰

2.33 The National CAMHS review highlighted the importance of the CAF and the CPA and stressed the usefulness of these assessment frameworks in both CAMHS and adult mental health and social care services.

2.34 The Assessment Framework is statutory guidance issued under section 7 of the Local Authority Social Services Act 1970. This means that in exercising their social services functions local authorities must act in accordance with the guidance unless there are exceptional reasons not to in individual cases.

2.35 The CPA will be of particular relevance to young people whose needs require that they continue to receive mental health care from health and/or social care agencies beyond their eighteenth birthday.

²⁸ Department of Health, revised 22nd July 2009

²⁹ Department of Health, 17th December 2010

³⁰ National CAMHS Review, 'Children and Young People in Mind' page 78

2.36 A summary of the three key frameworks (the CAF, the Assessment Framework and the CPA) that are of particular relevance to the assessment of individual's health and social care needs, and

how they relate to each other, is set out in Table 1 below. The application of these assessment frameworks will be considered in the next chapter.

Table 1: Assessment Procedures for Young People with Mental Health Problems

Assessment	Purpose	Age of Person
Common Assessment Framework (CAF)	<ul style="list-style-type: none"> To help practitioners working with children, young people and families, to assess children and young people's additional needs and identify what action needs to be taken to address those needs. A 'basic assessment tool' that can be used as a 'Gateway' to other more specialist assessments e.g. the Assessment Framework.³¹ 	<ul style="list-style-type: none"> Generally used for under 18s Can be extended beyond 18 where appropriate to enable the young person to have a smooth transition to adult services.³²
The Framework for the Assessment of Children in Need and their Families ('the Assessment Framework')	<ul style="list-style-type: none"> To explain how to carry out assessments of children in need under the CA 1989.³³ 	<ul style="list-style-type: none"> Generally used for under 18s Can be extended beyond 18 where appropriate to enable the young person to have a smooth transition to adult services.³⁴
Care Programme Approach (CPA)	<ul style="list-style-type: none"> To assess, plan, review & co-ordinate the range of treatment, care and support needs for people in contact with secondary mental health services who have complex characteristics.³⁵ Where appropriate its use should be coordinated with other systems e.g. the CAF, local systems for Looked After Children & education system e.g. the Special Educational Needs Framework. 	<ul style="list-style-type: none"> Any age Designed for adults but should be used (with appropriate adaptations) for children and young people receiving care from specialist multi-disciplinary CAMHS.³⁶

³¹ Department of Children, Schools & Families and Department of Health, A transition guide for all services key information for professionals about the transition process for disabled young people 2007, Appendix 3, 98. CAF does not replace the Framework for the Assessment of Children in Need and Their Families, which is statutory guidance issued under section 7 of the Local Authority Social Services Act 1970

³² For example for young people with learning difficulties or disabilities, assessments can be carried out up to the age of 25, see: The Common Assessment Framework for children and young people: A guide for managers, 2009, paragraph 3.4

³³ Department of Health et al, Framework for the Assessment of Children in Need and their Families (2000)

³⁴ For example, looked after children: Framework for the Assessment of Children in Need and their Families, 3.68

³⁵ Refocusing the Care Programme Approach: Policy and Positive Practice Guidance Department of Health, March 2008

³⁶ Refocusing the Care Programme Approach: Policy and Positive Practice Guidance pages 47–48

Confidentiality, Sharing Information and Decision-making

2.37 The right to confidentiality applies to all individuals. Where children and young people are able to make decisions about the use and disclosure of information they have provided in confidence, their views should be respected in the same way as adults.³⁷

2.38 However, in relation to children, and young people aged 16 or 17, this right to confidentiality can be qualified or limited in certain circumstances, for example, where child abuse or serious harm is suspected, the public interest may justify disclosure in accordance with the guidance *Working Together to Safeguard Children: A guide to inter-agency working to safeguard and promote the welfare of children*.³⁸

2.39 Guidance issued for health professionals and others planning the transition for young people with complex health needs or a disability advises:

*'From the start of the process, professionals must work with the young person and their family to ensure that, with their permission, information is shared to inform each other's assessments and coherent planning is based on a real understanding of the young person's needs.'*³⁹

2.40 The starting point for all the young people referred to in this guide is that they are able to make decision for themselves, for example, where they want to live and decisions about their health and social care. This is because under the Mental Capacity Act 2005 ('the MCA 2005'), individuals aged 16 and over are presumed to have capacity to make their own decisions unless evidence shows otherwise.⁴⁰

2.41 If there are concerns that the young person lacks capacity to make certain decisions for him or herself, an assessment of their capacity should be undertaken in accordance with the MCA 2005 and the Code of Practice to the Mental Capacity Act 2005. The MCA 2005 provides the legal framework for making decisions on behalf of individuals aged 16 or over who lack capacity to make such decisions for themselves.

2.42 Furthermore, there may be circumstances in which those with 'parental responsibility' for a young person who is unable to make decisions for him or herself can make such decisions for that young person. Annex 1 provides information on identifying those with parental responsibility.⁴¹

The importance of involving young people

2.43 A core principle of the United Nations Convention on the Rights of the Child is that the views of the child (defined as an individual under 18) are respected.⁴²

2.44 The importance of involving young people in the planning and delivery of their care is emphasised throughout relevant policy and legislation. For example:

- Sections 17 (4A) and 20(6) of the CA 1989 provide that before providing services or accommodation to a 'child in need' (explained below), the local authority must ascertain, so far as reasonably practicable and consistent with the child's welfare, the wishes and feelings of the child and must give due consideration to such wishes and feelings. A similar provision is included in section 22(4) of the CA 1989 in relation to decisions made with respect to a child who is being looked after by the local authority ('a looked after child') or whom the local authority is proposing to look after.

³⁷ See the MHA Code of Practice, 36.78 – 36.79

³⁸ Available at: publications.education.gov.uk/eOrderingDownload/00305-2010DOM-EN-v3.pdf

³⁹ Department Children, Schools & Families and Department of Health, *Transition: moving on well. A good practice guide for health professionals and their partners on transition planning for young people with complex health needs or a disability*, February 2008, page 23

⁴⁰ Section 1 of the MCA 2005

⁴¹ See also *The Legal Aspects of the Care and Treatment of Children and Young People with Mental Disorder: A Guide for Professionals*, NIMHE/DH, 2009, Chapter 2 and HM Government, *Information Sharing: Guidance for practitioners and managers*, 2008

⁴² See Article 12 Convention on the Rights of the Child

- Refocusing the Care Programme Approach, emphasises the importance of involving children and young people in the care planning process. It points out that to make young people's involvement in the CPA 'a reality rather than an aspiration careful attention needs to be paid to, for example, the design of paperwork so that service users do not feel excluded' and that communication needs to be tailored to them.
- Guidance on care planning, placement and review of looked after children ('the Care Planning guidance'),⁴³ which will come into effect in April 2011 states:

'Children should feel that they are active participants and engaged in the process when adults are trying to solve problems and make decisions about them. When plans are being made for the child's future, s/he is likely to feel less fearful if s/he understands what is happening and has been listened to from the beginning. Close involvement will make it more likely that s/he feels some ownership of what is happening and it may help him/her understand the purpose of services or other support being provided to him/her, his/her family and carer.'

2.45 The Care Planning guidance also emphasises the important role of advocates in assisting these young people in expressing their views:

'Where a child has difficulty in expressing his/her wishes and feelings about any decisions being made about him/her, consideration must be given to securing the support of an advocate.'⁴⁴

2.46 Box 1 below sets out an extract from Refocusing the CPA in relation to the involvement of young people in their care planning.

Box 1: The CPA and Young People's Involvement in Care Planning

'The review and other meetings should be young-person friendly (including the language used, timing of meetings, location of venues, who is in attendance, the possible need for interpreters); information leaflets and paperwork should be age-appropriate; staff should be competent in managing meetings in such a way as to ensure young people's views are heard and taken into account.

Young people should be supported in this process, using advocates as necessary, and assisted in developing skills to voice their views; the views of their parents and carers should also be incorporated, and where appropriate, distinguished from those of the young person.

Agencies in a given locality need to have protocols for working together in this process, for example in the duty to cooperate, and information sharing processes.'

Refocusing the Care Programme Approach: Policy and Positive Practice Guidance⁴⁵

⁴³ Volume 2: Care Planning, Placement and Case Review (England) Regulations 2010 and statutory guidance, March 2010

⁴⁴ Paragraph 1.10

⁴⁵ Page 48

Complaints procedures⁴⁶

2.47 Young people (and in some cases, others on behalf of the young person) have a right to make complaints about the services that they receive from NHS bodies and/or local authorities.

2.48 NHS bodies and local authorities are required to have arrangements in place to handle and consider complaints in relation to the exercise of their statutory functions.⁴⁷

2.49 Section 26(3) of the CA 1989 requires local authorities to establish procedures to consider complaints made in relation the discharge of their duties in relation to children in need and their families (including looked after children).⁴⁸ Complaints can be made by a 'child in need' as well as those with parental responsibility, local foster parents and any other person considered to have a sufficient interest in the young person's welfare to make representation on the young person's behalf.

2.50 If not satisfied with the outcome of their complaint, individuals can make a complaint to the relevant ombudsman. This will be the Local Government Ombudsman⁴⁹ in relation to local authorities and the Health Service Ombudsman⁵⁰ in relation to NHS bodies. The Ombudsmen investigate allegations of 'maladministration' (for example, complaints about the way in which a service is delivered, or where it is not delivered at all).

2.51 In some circumstances, individuals may wish to pursue legal remedies such as applying to the High Court for judicial review.

⁴⁶ For further information on complaints and other remedies, see Steve Broach, Luke Clements and Janet Read, *Disabled Children A Legal Handbook*, LAG, 2010, Chapter 2 paragraphs 2.38 – 2.48

⁴⁷ See the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009 and www.dh.gov.uk/en/SocialCare/DH_120361

⁴⁸ See *The Children Act 1989 Representations Procedure (England) Regulations 2006* DCSF, *Getting the Best from Complaints, Social Care Complaints and Representations for Children, Young People and Others*, 2006

⁴⁹ See www.lgo.org.uk/

⁵⁰ See www.ombudsman.org.uk/



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YOUNG



The Statutory Framework for the Provision of Services & Support



3.1 This chapter provides an overview of the health and social care legislation and guidance that is relevant to the assessment of the needs of young people with a mental disorder and decision on what, if any, services are to be provided for such needs.⁵¹

3.2 The statutory provisions underpinning a local authority's obligation to undertake assessments are complex. Although in general children and young people are assessed under section 17 of the CA 1989 and adults assessed under section 47 of the NHS & Community Care Act 1990 ('the NHS&CCA 1990') – this is not invariably the case. For example:

- Some young people aged over 18 may be entitled to support under the leaving care provisions of the CA 1989 (which were inserted by the Children (Leaving Care) Act 2000).
- Some children may be entitled to an assessment under section 47 of the NHS&CCA 1990 (because, for example, they are entitled to services under section 117 of the MHA 1983 or schedule 20 of the NHS Act 2006 (see Annex 1).

3.3 As a matter of sound administration, public bodies should not let these disparate obligations prevent a young person from receiving the appropriate support whilst they are in transition. It is irrelevant, therefore, whether the assessment is undertaken under the CA 1989 or the NHS&CCA 1990 – if properly conducted, the assessment should ensure that the young person's welfare is safeguarded and promoted (and appropriate services are available).

3.4 This chapter considers the following areas:

- Overview of the responsibilities of NHS bodies
- Access to health and social care for children and young people
- Access to health and social care for people aged 18 or over
- Section 117 of the Mental Health Act 1983
- Carers' assessments
- Direct payments and Personal Budgets
- Looked After Children

Overview of the Responsibilities of NHS Bodies

General duty to ensure a comprehensive health service

3.5 The NHS Act 2006 sets out a general duty on the Secretary of State to provide or secure services for the 'promotion in England of a comprehensive health service' that is designed to secure improvement in the physical and mental health of the people of England and in the prevention, diagnosis and treatment of illness.⁵²

3.6 The range of services that the Secretary of State for Health must provide 'to the extent that he considers necessary to meet all reasonable requirements' include hospital accommodation and 'services or facilities for the prevention of illness, the care of persons suffering from illness and the after-care of persons who have suffered from illness'.⁵³

3.7 The responsibilities for commissioning and providing NHS services have been delegated to NHS bodies. For example, currently PCTs have the primary responsibility for commissioning health care services and NHS Trusts and NHS Foundation Trusts have the primary responsibility for providing these services.

3.8 All NHS bodies must:

'...comply with the law, respect fundamental human rights and ensure that their decisions are reached in accordance with established public law principles. They must not, for instance, ignore circular guidance, operate a perverse policy which in practice fetters their discretion to fund treatment, violate European law or fail to consult before reaching certain decisions.'⁵⁴

⁵⁴ As discussed at paragraph 1.14, this is a very broad term. It is defined in section 1 of the Mental Health Act 1983 ('the MHA 1983') as: 'any disorder or disability of the mind'.

⁵² Section 1 of the National Health Service Act 2006

⁵³ Sections 3 of the National Health Service Act 2006

⁵⁴ Luke Clements and Pauline Thompson, *Community Care and the Law*, 4th Edition, LAG, 399

NHS bodies' duty to assess

3.9 Unlike a local authority's duty to carry out a community care assessment under section 47 of the NHS&CCA 1990 (see below), there is no explicit duty on NHS bodies to carry out an assessment of an individuals' health care needs. However a recent publication, published by the Legal Action Group and the Council for Disabled People, *Disabled Children: A Legal Handbook*, sets out a number of arguments for stating that such a duty exists. These include that carrying out an assessment is an essential part of a process that must be followed by NHS bodies in order to exercise their statutory duties:

'...an assessment – ie the gathering all the relevant information about the child and his or her care needs and the determination of whether it is necessary to provide services to meet these needs.'⁵⁵

3.10 The authors also suggest that the duty to assess can be implied by section 11 of the CA 2004 which requires NHS bodies and a range of other organisations, including local authorities, to make arrangements to ensure that they safeguard and promote the welfare of children.

3.11 Guidance in relation to looked after children makes similar comments about PCTs duties, stating that it is the responsibility of the local authority responsible for the child to make sure that health assessments are carried out and that:

'In general, PCTs have a duty to comply with requests by local authorities for assistance to make sure that the assessment happens.'⁵⁶

Current primary care trust commissioning responsibilities

3.12 Paragraphs 3.13 – 3.17 below consider the current responsibilities of PCTs. Practitioners will need to ensure that they are up to date with legislative changes in relation to the role and responsibilities of health care agencies in the light of government proposals to abolish PCTs.

3.13 Currently PCTs are responsible for commissioning secondary care. Detailed regulations set out the basis for establishing the responsible commissioner for NHS treatment of an individual patient i.e. which PCT will be responsible for funding an individual's NHS care.⁵⁷

3.14 The Department of Health's publication *Who Pays? Establishing the responsible commissioner* ('the Responsible Commissioner guidance')⁵⁸ explains how these regulations apply in particular situations. In general the responsible commissioner (PCT) will be determined on the basis of the person's registration as an NHS patient with a GP, practice or, where the person is not registered, their place of residence. If the person is unable to give an address the responsible commissioner will usually be the PCT where the unit providing the treatment is located.

3.15 However there are specific rules for certain situations, such as when arrangements are made to place certain groups of children and young people 'in accommodation in the area of another PCT for secondary healthcare type services'. The four groups affected by these rules include 'Looked After Children and Children Leaving Care', and 'Young adults with continuing healthcare needs'. These rules are explained in the *Responsible Commissioner guidance*.

⁵⁵ Steve Broach, Luke Clements and Janet Read, *Disabled Children, A Legal Handbook*, Council for disabled children, LAG, 2010, at 178

⁵⁶ HM Government, *The Children Act 1989 Guidance and Regulations, Volume 2: Care Planning, Placement and Case Review (England) Regulations 2010 and statutory guidance*, March 2010, paragraph 2.51

⁵⁷ 3(7) to (10) of the National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002 (S.I. 2002/2375) as amended by S.I. 2002/2548, 2003/1497, 2006/359 and 2007/559 ("the Functions Regulations").

⁵⁸ Department of Health, *Who Pays? Establishing the responsible commissioner*, September 2007

3.16 In some cases there may be disagreements over who has the responsibility to fund an individual's care. Guidance makes clear that disputes between agencies should not affect the provision of care:

- 'The underlying principle is that there should be no gaps in responsibility – no treatment should be refused or delayed due to uncertainty or ambiguity as to which PCT is responsible for funding an individual's healthcare provision.'⁵⁹
- 'PCTs and local authorities in each local area should agree a local disputes resolution process to resolve cases where there is a dispute between NHS organisations, or between a PCT and a local authority, about a child or young person's continuing care needs and/or about the apportionment of funding of a package of continuing care...

...Disputes should not delay the provision of the care package, and protocol should make clear how funding will be provided pending resolution of the dispute.'⁶⁰

3.17 Box 2 below summarises the key points in determining the current commissioning responsibilities of PCTs.

Box 2 Current primary care trust commissioning responsibilities: Key Points

- Determining which PCT is the responsible commissioner for the purposes of NHS care can be complex.
- This must be resolved between the PCTs
- In the meantime this must not in any way impact on the young person.
- If the young person suffers as a result of a such a dispute, this will amount to maladministration and subject to challenge on grounds such as the failure of the relevant bodies to work together to improve the well being of such young people (see for example section 10 of the CA 2004 and section 82 NHS Act 2006)

Access to Health and Social Care: Children and Young People

3.18 Local authorities have wide ranging duties and powers in relation to the provision of services and support to certain groups of children and young people. Key provisions are set out in Part 3 of the CA 1989. Local authorities also have specific responsibilities for the provision of services under section 2 of the Chronically Sick and Disabled Persons Act 1970 ('the CSPDA 1970'). These duties will be particularly important where local arrangements require that young people leave CAMHS a year or so before they become 18.

3.19 Under section 17 of the CA 1989 local authorities have a general duty to safeguard and promote the welfare of children 'in need' in their area by providing 'a range and level of services appropriate to those children's needs', which may include the provision of accommodation.

⁵⁹ Department of Health, Who Pays? Establishing the responsible commissioner', September 2007 Principle 2

⁶⁰ Department of Health, National Framework for Children and Young People's Continuing Care, 25 March 2010, pages 18 - 19

3.20 Young people under 18 who are ‘disabled’ fall within the definition of a ‘child in need’ and the definition of ‘disabled’ includes those who ‘suffer from a mental disorder of any kind’.⁶¹ The range of services that may be provided under section 17 of the CA 1989 are set out in Box 3 below.

3.21 Section 2 of the CSPDA 1970 places a duty on social services to provide certain services that they have assessed a disabled person to need. The definition of ‘disabled person’ includes persons ‘who suffer from mental disorder of any description’. The duty under section 2 applies to individuals of any age if they are ‘ordinarily resident’⁶² in the local authority’s area. The range of services covered by section 2 of the CSPDA 1970 is set out in Box 4 below.

Undertaking an assessment

3.22 Local authorities should ensure that all young people receiving care from CAMHS receive an assessment of their needs. Failure to carry out such an assessment could lead to legal challenge through judicial review.

3.23 This expectation arises both from section 17 of the CA 1989 and from section 2 of the CSPDA 1970. Taken together these provisions make clear that in order to fulfil their statutory duties, local authorities must take reasonable steps to carry out an assessment of the needs of a child or young person under the age of 18 with a mental disorder.

3.24 In relation to section 17 of the CA 1989, this is because although the duty to assess the needs of a child in need is not expressly set out in the CA 1989, the courts have held that local authorities must take reasonable steps to undertake such assessments when it appears that a child is ‘in need’. (See Annex 1 for further details.)

3.25 Young people under the age of 18 who are receiving care from CAMHS will, in most cases, fall within the definition of ‘disabled’ and therefore will be considered to be a ‘child in need’ for the purpose of section 17 of the CA 1989.

3.26 If for any reason, this is disputed (for example it is stated that the young person has no diagnosis and it is not clear that she or he has a mental disorder) that young person is still likely to be a ‘child in need’ on the basis that, having been assessed to need support from CAMHS the young person meets an alternative criteria for a ‘child in need’, namely:

‘...his health or development is likely to be significantly impaired, or further impaired, without the provision to him of such services’⁶³

Box 3: Section 17 Children Act 1989 Services

The social services authority may provide a wide range of services for children in need. These include ‘provision for children living with their families’ and accommodation:

- Provision for children living with their families:⁶⁴
 - advice, guidance and counselling;
 - occupational, social, cultural or recreational activities;
 - home help (which may include laundry facilities);
 - facilities for, or assistance with, travelling to and from home for the purpose of taking advantage of any other service provided under this Act or of any similar service;
 - assistance to enable the child concerned and his family to have a holiday.
- Accommodation⁶⁵ (see below at paragraphs 3.40 – 3.51)
- Assistance ‘in kind or, in exceptional circumstances, in cash’⁶⁶

⁶¹ The definition of ‘a child in need’ is set out in Annex 1

⁶² See note on the duty to assess and ordinary residence in Annex 1

⁶³ 17 (10) of the CA 1989

⁶⁴ Schedule 2, Part 1, paragraph 8 CA 1989

⁶⁵ Section 17(6) of the CA 1989

⁶⁶ Section 17(6) of the CA. However, as from 1 April 2011 the words ‘in exceptional circumstances’ will be repealed by section 24 of the Children and Young Persons Act 2008. See also SI 2010/2981

3.27 In relation to section 2 of the CSPDA 1970, local authorities must consider whether it is necessary, in order to meet the needs of a disabled child or young person, for the authority to provide the type of support set out in section 2 (see the list in Box 4 below). Where the local authority is satisfied that this test is met, it should ensure that it meets the needs in question. Children and young people with a wide range of mental health problems, mild to moderate, to serious will be covered by the term 'disabled person' and therefore entitled to an assessment.

3.28 An assessment under section 2 of the CSDPA 1970 may be carried out in conjunction with an assessment of needs under section 17 of the CA 1989. (The assessment process is discussed below.)

3.29 The type and level of need of a 'child in need' will vary greatly between individuals (and between families). The Framework for Assessment of Children in Need and their Families ('the Assessment Framework') envisages a wide ranging assessment, requiring 'a thorough understanding' of three main areas: the developmental needs of the child or young person; the capacities of parents or caregivers to respond appropriately to those needs and the impact of wider family and environmental factors on parenting capacity and children.⁶⁷

3.30 The Assessment Framework states that the assessment of the child or young person's developmental needs includes their physical and mental wellbeing, emotional and behavioural development, their view of themselves and their abilities, self image and self esteem, and their relationships with their parents or caregivers, with siblings, peers and other significant persons in their life.⁶⁸

Box 4: Section 2 Chronically Sick and Disabled Persons Act 1970 Services

This section covers the following services which the social services authority must provide if it has assessed a disabled person as requiring them:

- Practical assistance in the home
- Providing, or helping the person to obtain, 'wireless, television, library or similar recreational facilities;
- Provision of lectures, games, outings or other recreational facilities outside the person's home or assistance in helping the person in taking advantage of available educational facilities
- Provision of travel and other assistance to enable the person to participate in services provided under section 2 of the CSPDA 1970
- Home adaptations and 'additional facilities designed to secure the person's greater safety, comfort or convenience'
- Facilitating holidays
- Provision of meals, whether in the person's home or elsewhere
- Providing, or helping the person to obtain, 'a telephone and any special equipment necessary to enable him to use a telephone'.

The assessment process

3.31 Assessments under the CA 1989 are undertaken in accordance with the process set out under the Assessment Framework.⁶⁹ They should consider not only the provision of support under the CA 1989, but also that available under section 2 of the CSDPA 1970.

⁶⁷ Department of Health, the Framework for Assessment of Children in Need and their Families, 2000 ('the Assessment Framework') Chapter 2

⁶⁸ Chapter 2, 2.3 -2.8

⁶⁹ Framework for the Assessment of Children in Need and their Families (2000) Department of Health

3.32 The Assessment Framework identifies the following key actions:⁷⁰

- Agree an assessment plan with the child and family.
- Ensure that all parties understand who is doing what, when, and how the various assessments will be used to inform overall judgements about a child's needs and subsequent planning.
- Clarify, when joint assessments are being undertaken, whether one professional will undertake an assessment on behalf of the team or whether several types of assessment are to be undertaken in parallel.
- Consider how to avoid duplication, if several assessments are to be undertaken.
- Ensure the agreed process is based on what is appropriate for the needs of the particular child and family, taking account of the purpose of the assessment, rather than what fits best with professional systems.
- Allow enough flexibility in agreed protocols and procedures to accommodate different ways of undertaking assessments within the overall Assessment Framework.

The role of agencies and professionals in the assessment

3.33 While the assessment of a child in need is led by children's social care services professionals, the Assessment Framework recognises that other agencies are likely to have an important role. In relation to a young person with mental health problems this will include members of the CAMHS team. The input of education professionals may also be needed in addition to other professionals who know the child/young person and their families well. These professionals will be key in assisting children's social care services to carry out their assessment functions under the CA 1989.

3.34 All professionals involved in the assessment should be familiar with the Assessment Framework.⁷¹

Duty to co-operate

3.35 Section 27 of the CA 1989 places a specific duty on authorities, including local housing authorities and NHS Trusts, Primary Care Trusts, NHS Foundation Trusts and other authorities to co-operate with any local authorities which requests their help in the exercise of functions towards children in need. Section 27 requires authorities to comply with such a request for help in providing services to children and their families unless the request is incompatible with their own duties and does not 'unduly prejudice the discharge of any of their functions'.

3.36 The Assessment Framework sets out the principles that should underpin the planning, preparation, co-ordination and communication with professionals in other agencies. These are included in Box 5 below.

⁷⁰ Paragraph 1.24

⁷¹ Framework for the Assessment of Children in Need and their Families (2000) Department of Health paragraph 1.22

Box 5 Principles for inter-agency, inter-disciplinary work with children in need

It is essential to be clear about:

- the purpose and anticipated outputs from the assessment;
- the legislative basis for the assessment;
- the protocols and procedures to be followed;
- which agency, team or professional has lead responsibility;
- how the child and family members will be involved in the assessment process;
- which professional has lead responsibility for analysing the assessment findings and constructing a plan;
- the respective roles of each professional involved in the assessment;
- the way in which information will be shared across professional boundaries and within agencies, and be recorded;
- which professional will have responsibility for taking forward the plan when it is agreed.

Framework for the Assessment of Children in Need and their Families, 1.23

Timescale for the assessment

3.37 The Assessment Framework⁷² includes timescales that should, 'except in exceptional circumstances involving difficulty in obtaining relevant information or children with very complex needs',⁷³ be adhered to when assessing whether or not a child is in need and whether, as a result, services should be provided:

- **Decision on action:** a decision must be taken about what response is required including whether to carry out an initial assessment within 1 working day of a referral being received.

- **Initial assessment:** a brief assessment of each child/young person referred to children's social care services to be carried out within a maximum of 10 days.⁷⁴
- **Core Assessment:** 'an in-depth assessment which addresses the central or most important aspects of the needs of a child and the capacity of his or her or care givers to respond appropriately to these needs within the wider family and community context' – this must be completed within a maximum of 35 working days.

Taking the young person's wishes and feelings into account

3.38 The young person's wishes and feelings must be ascertained and given due consideration by the local authority before determining what, if any, services to provide.⁷⁵ Furthermore, at the conclusion of either an initial or core assessment, they (and, where appropriate, their parents) should be:

- Informed in writing, and/or in another more appropriate medium, of the decisions made; and
- Offered the opportunity to record their views, disagreements and to ask for corrections to recorded information.

3.39 The Assessment Framework advises that agencies and individuals involved in the assessment should also be informed of the decisions, with reasons for these made clear.⁷⁶

⁷² See 'Process of Assessment and Timing' 3.1-3.14

⁷³ See Provision of accommodation for 16 and 17 year old young people who may be homeless and/or require accommodation, paragraph 2.36

⁷⁴ This was originally 7 working days but has been changed to 10 working days – see Working Together to Safeguard Children: A guide to inter-agency working to safeguard and promote the welfare of children, 2010

⁷⁵ See: sections 17(4A) and 20(6) (and in relation to care leavers, 22(5)) of the CA 1989.

⁷⁶ Assessment Framework 3.13

Decision on services to be delivered

Eligibility for services under the Children Act 1989

3.40 In determining what, if any services to provide ('the service provision decision'), to a child/young person who has been assessed to be in need, children's social care services will refer to their 'eligibility criteria'.

3.41 When applying such eligibility criteria, the children's social care services will be required to make a decision that is consistent with the information it has obtained through the assessment. This decision should recognise explicitly, and take account of, the consequences of not providing the services, both in relation to the potential harm or impaired development of the child/young person and in terms of the impact on the child/young person's family (such as work, training or education) or their ability to sustain the caring relationship.⁷⁷

3.42 Local authorities may charge for the services that they provide subject to various restrictions relating to the person's financial means. The parents of children under 16 may be charged, or where the services are provided to a young person aged 16 or over, the charges may be made to the young person. Similar provisions apply to accommodation provided under the CA 1989.⁷⁸

Services under the Chronically Sick and Disabled Persons Act 1970

3.43 Section 2 of the CSDPA 1970 provides that a person must be provided with the services that s/he has been assessed to need. This means that once the local authority concludes in relation to an individual that it is necessary to provide a service under this Act in order to meet their needs, then it must do so.⁷⁹ Local authorities may charge for the services provided under section 2 of the CSDPA 1970, but few do so.⁸⁰

Accommodation under the Children Act 1989: Section 20

3.44 Section 20 of the CA 1989 sets out the circumstances in which a local authority is under a duty to provide accommodation to children and young people in need.

3.45 Section 20(1) places a duty on the local authority to provide 'accommodation for any child in need within their area who appears to them to require accommodation' as a result of

- a) there being no person who has parental responsibility for him;
- b) his being lost or having been abandoned; or
- c) the person who has been caring for him being prevented (whether or not permanently, and for whatever reason) from providing him with suitable accommodation or care.

3.46 Section 20(3) requires that:

'Every local authority shall provide accommodation for any child in need within their area who has reached the age of sixteen and whose welfare the authority consider is likely to be seriously prejudiced if they do not provide him with accommodation.'

3.47 Both section 20(1) and 20(3) of the CA 1989 make clear that the local authority responsible for providing accommodation is the local authority in which the child in need presents themselves as requiring assistance. In *G(FC) v Southwark*, the House of Lords held:

'Local authorities have to look after the children in their area irrespective of where they are habitually resident. They may pass a child on to an area where he is ordinarily resident under section 20(2) or recoup the cost of providing for him under section 29(7). But there should be no more passing the child from pillar to post while the authorities argue about where he comes from.'⁸¹

⁷⁷ Clements and Thompson, *Community Care and the Law*, 4th Edition, 24.37

⁷⁸ For further information, see *Community Care and the Law*, 4th Edition, 24.68-24.73

⁷⁹ *Community Care and the Law*, 4th Edition, 3.171 and 9.69

⁸⁰ *Community Care and the Law*, 4th Edition, 24.72

⁸¹ *R on the application of G(FC) v Southwark LBC*, 12 CCLR 437 at 447

Accommodation under the Children Act 1989: Section 17

3.48 Social service authorities may also provide accommodation under section 17(6) of the CA 1989. Accommodation provided under section 17 will 'almost always' concern children and young people 'needing to be accommodated with their families'.⁸²

3.49 Young people accommodated under section 17 of the CA 1989 are not 'looked after' by the local authority. (More information on 'looked after children' is given below.)

3.50 In relation to children and young people who receive short breaks or respite care, the Government has issued guidance to assist in determining whether the accommodation is provided under section 17(6) of the CA 1989 (and therefore the child or young person is not a 'looked after child') or under section 20(4) of the CA 1989 (in which case the child or young person is looked after).⁸³

3.51 In relation to 16 and 17 year old young people who may be homeless and/or require accommodation, the guidance Provision of accommodation for 16- and 17-year-old young people who may be homeless and/or require accommodation points out that:

'The powers of local authorities to provide accommodation under section 17 cannot be used to substitute for their duty to provide accommodation under section 20(1) of the 1989 Act to homeless 16 and 17 year olds who are assessed as being children in need following the process described in Part 2, above.'⁸⁴

The Assessment Framework: Care Planning and Review of Young People

3.52 The Assessment Framework emphasises that the child/young person's care plan must be based on the findings from the assessment, with specific objectives 'expressed in terms of their health and development' and that the 'plan must be reviewed and refined over time to ensure the agreed case objectives are achieved'.⁸⁵ If the plan requires work to be undertaken to support children and families in the community:

- it is good practice to review the plan with family members at least every six months, and to formally record it; and
- key professionals should also be involved in the review process and in constructing the revised care plan.⁸⁶

The Care Programme Approach and Care Planning for Young People

3.53 The Department of Health's guidance on the CPA, Refocusing the CPA (discussed above in Chapter 2) states:

'an approach such as CPA can particularly add value for those children and young people with more complex needs, such as those which need help from specialist multi-disciplinary Child and Adolescent Mental Health Services (CAMHS)'.

3.54 Refocusing the CPA⁸⁷ notes that the CPA is not the only care planning method for children and young people under the age of 18 and they, more than adults, are likely to be subject to multiple care plans and review mechanisms from multiple agencies e.g. Looked After Child Reviews, Special Educational Needs reviews, (children's) Common Assessment Framework (CAF). Accordingly:

⁸² Provision of accommodation for 16- and 17-year-old young people who may be homeless and/or require accommodation Department Children Schools and Families and Communities and Local Government, April 2010, 2.54 <http://www.education.gov.uk/childrenandyoungpeople/families/childrenincare/news/a0065647/children-in-care-news>

⁸³ Statutory guidance on how to safeguard and promote the welfare of disabled children using short breaks, Department of Children, Schools and Families, 2010, (due to come into effect in April 2011).

⁸⁴ Department of Children Schools and Families and Communities and Local Government, April 2010, 2.55

⁸⁵ The Assessment Framework 4.37

⁸⁶ The Assessment Framework 4.36

⁸⁷ Refocusing the CPA Page 47

- Its use needs to be coordinated with the other systems, for example, the (children’s) CAF, and any local systems for Looked After Children and those within the youth justice system;
- Practitioners need to be clear about which approach to use in a given situation and how the (children’s) CAF would capture issues about the psychological wellbeing of children and young people who were not subject to CPA;
- It will be important that young people are not overloaded with assessment and review meetings; and
- There is a need to consider the interplay between the CPA care co-ordinator role and that of the (children’s) Lead Professional.

Box 6 Examples of ‘community care services’

A range of services fall within the definition of ‘community care services’,⁹⁰ including:

- social work service advice and support,
- day centres and other facilities,
- assistance in finding accommodation,
- holiday homes
- free or subsidised travel
- home help and laundry services
- domiciliary and care services to people living in their own homes and elsewhere
- home adaptations and
- residential accommodation.

Access to Health and Social Care: Individuals aged 18 or Over

3.55 Most young people who are receiving care and support from CAMHS will be entitled to a community care assessment under the NHS and Community Care Act 1990.⁸⁸ For the reasons explained below, local social services authorities’ duty to undertake a community care assessment will apply whether or not the young person is considered to meet the criteria for CPA, set by their local adult mental health services.⁸⁹

The NHS and Community Care Act 1990

3.56 The NHS and Community Care Act 1990 provides for the assessment of individuals, generally adults, to determine if a person is eligible for adult social care. If the person is assessed to have ‘eligible needs’, services referred to as ‘community care services’, will be provided to meet such needs.

3.57 Box 6 below gives some examples of ‘community care services’.

Individuals may be in need of such services because of serious illness, physical disabilities, frailty because of old age, learning disabilities or mental health problems.

3.58 Accordingly, a community care assessment will be a crucial stage of a young person’s transition from CAMHS to adult mental health care. It will be the mechanism by which the young person’s needs for social care are assessed. The assessment can also assist in other needs being identified, for example if the young person appears to have health or housing needs they can be referred to the relevant health or housing authority.

Duty to undertake an assessment⁹¹

3.59 Local authorities have a duty to carry out an assessment of the needs of individuals who may be in need of ‘community care services’.

3.60 Generally the services apply to people who are aged 18 or over (although as noted above, services under section 2 of the CSPDA apply to disabled people of all ages).

⁸⁸ As noted in the introduction to this chapter, some young people may be entitled to an assessment under other legislation

⁸⁹ See R(HP and KP) v Islington LBC [2004] EWHC 7 (Admin), (2005) 82 BMLR, 113

⁹⁰ See Annex 1 for further details. Although some of these services are only available to persons aged 18 or over, there are corresponding duties under the CA 1989 to provide the same services.

⁹¹ Note: social services authorities can take action in emergencies, without having carried out a full assessment – see section 47(5) and (6) NHS & Community Act 1990

Duty arises if person 'may be in need'

3.61 The duty to carry out a community care assessment arises when the social services authority is made aware that a person may be in need of such services. This may be because a person has requested an assessment for themselves or for the person they care for; or another agency makes a referral to social services.

3.62 The duty to assess is triggered by the person appearing to need community care services. This means that the duty to assess is not dependent on the likelihood of the person being entitled to receive such services (the authority cannot refuse to carry out the assessment on the basis that there is no prospect of the authority meeting any of the persons needs).⁹² Nor is the duty dependent on the person being 'ordinarily resident' in that social services authority. This is discussed in more detail in Annex 1.

Young people about to become 18

3.63 Young people who will soon reach their eighteenth birthday and are likely to need community services as an adult should be treated as a 'person who may be in need' of community care services. Department of Health guidance states:

'Councils must not exempt any person who approaches or is referred to them for help from the process to determine eligibility for social care, regardless of their age, circumstances, apparent financial means or the nature of their needs.'⁹³

Assessment Process

3.64 The purpose of the community care assessment is to decide whether a person needs a community care service and, if they do, the types of services that are needed and whether it can be provided by the social services authority. Local authorities can also make direct payments in lieu of services and increasingly local authorities are making 'personal budgets' (also known as 'individual budgets') available (see below).

Eligibility criteria

3.65 The Department of Health's guidance, 'Prioritising need in the context of Putting People First: a whole system approach to eligibility for social care - guidance on eligibility criteria for adult social care' ('Prioritising Need')⁹⁴ grades eligibility criteria into four bands: critical, substantial, moderate and low. Paragraph 78 highlights the following points:

- The purpose of a community care assessment is to identify and evaluate an individual's presenting needs (defined as 'the issues and support needs that are identified when individuals approach, or are referred to, councils seeking social care support') and how these needs impose barriers to that person's independence and/or well-being.
- Information derived from an individual's assessment should be used to inform decisions on eligibility.
- Where eligible needs have been identified, an appropriate support plan can then be put together in collaboration with the individual, describing the support they will draw upon to overcome barriers to independence and well-being, both immediately and over the longer term. ('Eligible needs' are defined as: 'those presenting needs for which a council will provide help because they fall within the council's eligibility criteria')

⁹² Clements and Thompson, 3.73, referring to the case of *R v Bristol CC ex p Penfold* (1998) 1 CCLR 315

⁹³ Prioritising need in the context of Putting People First: a whole system approach to eligibility for social care - guidance on eligibility criteria for adult social care, 51

⁹⁴ Issued under s7(1) of the Local Authority Social Services Act 1970 and took effect from April 2010

Involving and informing individuals and their families

3.66 Local authorities have specific duties in relation to consultation with, and providing information to, the person being assessed.⁹⁵ For example they must consult the person being assessed, consider whether the person has any carers and, where they think it appropriate, consult those carers.

3.67 Prioritising Need provides detailed guidance on the assessment, process, including an emphasis on close consultation with the person, and where appropriate, their family. For example:

- Where appropriate, assessment should involve a full discussion not only with the person seeking support, but also with carers and other close family members, to consider the impact of a person's needs on those around them, taking into account their views about the person's needs and recognising the contribution that they are willing and able to make to the person's support and life.
- Councils should work with individuals to explore their presenting needs and identify what outcomes they would like to be able to achieve. In this way they can evaluate how the individual's presenting needs might pose risks to their independence and/or well-being, both in the immediate and longer-term. Councils should also consider with the individual any external and environmental factors that have caused, or exacerbate, the difficulties the individual is experiencing.⁹⁶

Joint working

3.68 Section 47(3) of the NHS & Community Care Act 1990 requires local authorities to inform the relevant health or housing agencies if the person being assessed appears to have a health or housing need. Paragraph 86 of Prioritising Need highlights that:

- Agencies should work together to ensure that information from assessment and related activities is shared among professionals, with due regard to data protection, in such a way that duplication of assessment is minimised for service users, carers and professionals alike.
- In coordinating assessment, agencies should maintain an emphasis on outcomes rather than functions or services.
- The result will be an assessment process that individuals experience as consistent, seamless and timely.

Charging arrangements

3.69 Local authorities must also provide information to the person, and if appropriate any carers, about any charges that are going to be made in respect of the community care services to be provided.⁹⁷ However, an assessment of a person's financial situation should not be made until after the assessment of needs has been undertaken and the person has been assessed as having eligible needs.

3.70 The assessment of the 'individual's ability to pay charges should be carried out promptly, and written information about any charges or contributions payable, and how they have been calculated, should be communicated to the individual.'⁹⁸

⁹⁵ See Department of Health, Community Care Assessment Directions, August 2004

⁹⁶ Prioritising need in the context of Putting People First: a whole system approach to eligibility for social care - guidance on eligibility criteria for adult social care, Paragraph 59

⁹⁷ Community Care Assessment Directions 2004

⁹⁸ Prioritising need in the context of Putting People First: a whole system approach to eligibility for social care - guidance on eligibility criteria for adult social care, Paragraph 71

Decision on services to be delivered

3.71 Once the community care assessment has been completed local authorities must:

- ‘having regard to the results of that assessment’, decide whether the person’s needs call for the provision of any community care services by the authority;⁹⁹ and
- where a carer’s assessment has been undertaken, take account of the sustainability of the caring role when deciding what community care services it is necessary to provide.¹⁰⁰

3.72 The local authority’s eligibility criteria should then be used to identify the needs which call for the provision of services (eligible needs), according to the risks to independence and well-being both in the immediate and longer-term. These eligible needs should also be recorded and agreed wherever possible, by the individual or their representatives.

Prioritising Need: Preparation of a Care Plan

3.73 Once the person’s eligible needs have been identified, a plan for their care and support should be prepared with them.¹⁰¹

3.74 Box 7 below suggests the points that should be included in a person’s care plan.

Box 7 Care Plan

A written record of the support plan, agreed with the person, should include the following:

- A note of the eligible needs identified during assessment;
- Agreed outcomes and how support will be organised to meet those outcomes;
- A risk assessment including any actions to be taken to manage identified risks;
- Contingency plans to manage emergency changes;
- Any financial contributions the individual is assessed to pay;
- Support which carers and others are willing and able to provide;
- Support to be provided to address needs identified through the carers assessment, where appropriate; and
- A review date.¹⁰²

Care planning and the Care Programme Approach (CPA)

3.75 The CPA will only apply where the person is considered to have complex and serious mental health problems; for example if there is a current or potential risk of suicide, self harm, harm to others (including history of offending) or the person is currently detained under the MHA 1983 (or has recently been detained under the MHA 1983).¹⁰³

3.76 Where the CPA does apply:

- The reviews for social care and for the CPA should be synchronised as this ‘will enable a greater focus on outcomes for the individual based on their overall health and social care needs and not just social care factors’.¹⁰⁴

⁹⁹ Section 47(1) of the NHS and Community Care Act 1990

¹⁰⁰ Carers (Recognition and Services) Act 1995

¹⁰¹ Prioritising Need emphasises the importance of helping people to use ‘personal budgets to direct the funding available to them to meet their needs in the way that suits them best’, see paragraph 119.

¹⁰² Prioritising need in the context of Putting People First: a whole system approach to eligibility for social care - guidance on eligibility criteria for adult social care, paragraph 121

¹⁰³ See Refocusing the CPA Pages 12 – 15

¹⁰⁴ Prioritising Need, paragraph 149

- Local protocols should agree which system/co-ordinator/person is in the lead or, where care is shared, who takes the lead on which aspects. There should never be a situation where no-one takes the lead because it has been assumed that the other person/service has.¹⁰⁵
- Information gained during assessments (including risk assessments) should be shared as appropriate between agencies to avoid duplication.

3.77 A wide range of issues should be considered as part of the CPA assessment including the person's physical health, accommodation needs, employment, education and/or training needs and any issues around medication, as well as the impact on any carers and a risk assessment.¹⁰⁶ All care plans must include:

- Explicit crisis and contingency plans, including arrangements so that the service user or their carer can contact the right person if they need to at any time
- Clear details of who is responsible for addressing elements of care and support

3.78 There should be an 'on-going review, formal multi-disciplinary, multi-agency review at least once a year but likely to be needed more regularly'.

3.79 Copies of the plans should be offered to the service user and given to his or her GP and any other significant care provider, including carers, if appropriate.

3.80 The fact that a young person is not considered to meet the criteria does not affect his or her right to an assessment under the CA 1989 or the NHS&CCA 1990. This is emphasised by Refocusing the CPA which highlights:¹⁰⁷

- Everyone referred to secondary mental health services should receive an assessment of their mental health needs which aims to identify the needs and where they may be met.
- The factors used to determine whether a person is to be placed on the CPA should not be used to determine the person's eligibility for secondary mental health services.
- If a person's needs are considered to be best met by a secondary mental health service, a care plan should be devised and agreed with the service user and, where appropriate, their carer.¹⁰⁸

Section 117 Mental Health Act 1983

3.81 Section 117 of the MHA 1983 provides for the aftercare of certain patients who have been admitted to hospital under the MHA 1983, which will include all age groups. It requires the relevant health and local social services authorities to provide 'aftercare services' to patients who have been detained for treatment for their mental disorder under section 3 MHA 1983 or admitted, or transferred to hospital under Part 3 of that Act, and then cease to be so detained,¹⁰⁹ until such time as they 'are satisfied that the person concerned is no longer in need of such services'.¹¹⁰

3.82 The services provided under section 117 of the MHA 1983 are included in the definition of 'community care services. Thus, when a person's after-care needs are being assessed under section 117, this is a 'community care assessment' under section 47 NHS&CCA 1990. Further information is given in Box 8 below.

¹⁰⁵This and the next bullet point are taken from Refocusing the CPA, page 30

¹⁰⁶Refocusing the CPA, section 4

¹⁰⁷Refocusing the CPA page 12 – 18

¹⁰⁸Refocusing the CPA Page 18

¹⁰⁹Section 117(1) MHA 1983. See also sections 3, 37, 45A, 47 and 48 MHA 1983

¹¹⁰Section 117(2) MHA 1983

Box 8 Duty to provide aftercare services: Section 117 MHA 1983

- The duty has no age limitations. It will apply to children and young people who have been detained under the MHA 1983 to receive treatment for mental disorder.
- Aftercare is not defined in the MHA 1983 but includes social support, day care arrangements and accommodation.
- Section 117 services must be provided free of charge.¹¹¹
- Chapter 27 of the MHA Code provides guidance on after-care for patients under section 117 of the MHA 1983.
- The MHA Code states that all patients who are entitled to after-care under s117 of the MHA 1983 should be identified and a record kept of what after-care is provided to them under this provision.¹¹²
- Whereas for some other community care services, the person must be 'ordinarily resident' (see Annex 1) to be eligible for such services, section 117 MHA 1983 identifies the responsible local social services authority as 'the 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'.
- In general (but not always – see R (on application of M) v LB Hammersmith & Fulham & Others (March 2010) this distinction is unlikely to be important. Where however there is a dispute between public bodies as to who is responsible for services, the courts require that one of them accept interim responsibility whilst they are resolving their differences, i.e. that whatever happens, the disabled person should not suffer in any way from this funding disagreement.

3.83 Table 2 below provides an overview of the legislation concerning the assessment of individuals' needs for social care and the decisions on what services, if any, to be provided.

¹¹¹ R v Manchester City Council ex parte Stennett [2002] 4 All ER 124

¹¹² 27.11 of the MHA Code.

**Table 2: Young people with mental disorder:
Assessment of needs and service provision decision¹¹³**

Key Questions	Relevant legislation		
	S17 CA 1989	S47 NHS&CCA 1990	S2 CSDPA 1970
Relevant age	Under 18 (generally)	18/over (generally)	Any age
When is there a duty to assess?	If the young person appears to be a 'child in need' (defined in s17(11) CA 1989, see Annex 1)	If the person 'may be in need of community care services'	<ul style="list-style-type: none"> • If a disabled person requests assessment¹¹⁴ • Linked to assessment under s17 CA 1989 and s47 NHS&CCA 1990
Who has the responsibility to assess?	Local Authority (LA)	Local Authority	<ul style="list-style-type: none"> • LA (if with s17 CA 1989 assessment) or • LA (if with s47 NHS&CCA 1990 assessment)
How to assess (relevant guidance)	<ul style="list-style-type: none"> • Assessment Framework • CAF for initial assessment • CPA may also be relevant 	<ul style="list-style-type: none"> • Prioritising Need • CPA may also be relevant 	<ul style="list-style-type: none"> • Assessment Framework (if with s17 CA 1989 assessment) • Prioritising Need (if with s47 NHS&CCA 1990 assessment)
Timescale	Set out in the Assessment Framework (initial assessment within 10 working days and core assessment within 35 days)	No set timescale: within a reasonable time	<ul style="list-style-type: none"> • Will be subject to the timescale of whichever assessment is being undertaken (s17 CA 1989 or s47 NHS & CCA 1990)
Provision of services	Subject to eligibility criteria	Subject to eligibility criteria	<ul style="list-style-type: none"> • Services must be provided to meet assessed needs
Co-operation between agencies	LA may request help of agencies including NHS agencies and local housing authorities who must respond unless good reason for not (s27 CA 1989)	LA may request help of NHS agencies and local housing authority who should respond	<ul style="list-style-type: none"> • Not specified so will depend on which legislation assessment being undertaken ((s17 CA 1989 or s47 NHS & CCA 1990)
Carer's assessment	Yes, see section on Carers' assessments below	Yes, see section on Carers' assessments below	Yes, linked to s17 CA 1989 or s47 NHS & CCA 1990 assessment

¹¹³The following abbreviations are used in this table: CPA – Care Programme Approach; CAF – Common Assessment Framework

¹¹⁴See section 4 Disabled Persons (Services, Consultation and Representation) Act 1986

Carers' assessments

3.84 Parents and other carers of people with mental health problems (of any age) will also be entitled to assessments of their needs.

Parents

3.85 The Department of Health's Prioritising Need advises:

'Under the Carers and Disabled Children Act 2000, parents of disabled children can also request an assessment if the local authority is satisfied that the disabled child and their family are persons for whom it may provide or arrange the provision of services under section 17 of the Children Act 1989. The local authority must take into account the results of this assessment when deciding what services, if any, to provide under that section. The 2000 Act also amended the 1989 Act to the effect that direct payments could be made to parents for the purposes of arranging care for their disabled children and in some cases to older disabled children.'¹¹⁵

Other carers

3.86 If the young person has a carer who is providing 'a substantial amount of care on a regular basis', that carer can request an assessment under the Carers (Recognition and Services) Act 1995 and the Carers and Disabled Children Act 2000.

Services to carers

3.87 Local authorities also have a power to provide services to carers (aged 16 or over caring for an adult) under the Carers and Disabled Children Act 2000. For younger carers or people caring for children or young people, support services can be provided under section 17 of the CA 1989

Direct Payments and Personal Budgets¹¹⁶

3.88 Section 17A of the CA 1989 enables local authorities to make direct payments, in lieu of services for a disabled child or young person. These can be paid either to a person with parental responsibility for the disabled child or young person, or to a disabled young person aged 16 and 17: in this respect, therefore direct payments can play a useful part in preparing a young person for the responsibilities of adulthood. Disabled adults are entitled to direct payments under section 57 of the Health and Social Care Act 2001.¹¹⁷

Direct payments and care leavers

3.89 Where local authorities have set up a Personal Assistance Support Scheme which includes a direct payment, the disabled care leaver's personal adviser will need to work with this scheme in order to support the young person to use these payments. Until the age of 18, these will be provided under section 17A of the CA 1989, and after the age of 18 direct payments can continue under section 57 Health and Social Care Act 2001.

Personal budgets in social care

3.90 Personal budgets are local authority money apportioned to individuals to manage their care costs in line with an agreed support plan, following a full community care assessment and financial allocation by the council. An individual can take a personal budget in the following different ways:

- as a direct (cash) payment, held by the individual
- an account held and managed by the council in line with the individual's wishes, or placed with a third party (provider) and called off by the individual in agreement with the provider
- as a mixture of the above.

¹¹⁵ Paragraph 27 (Guidance applicable from April 2010)

¹¹⁶ For more information on direct payments see: www.direct.gov.uk/en/DisabledPeople/FinancialSupport/Introductiontofinancialsupport/DG_10016128

¹¹⁷ Community Care, Services for Carers and Children's Services (Direct Payments) (England) Regulations 2009 SI No 1887

Looked After Children

3.91 The Children (Leaving Care) Act 2000 amended the CA 1989, by introducing new requirements on local authorities to plan for looked after children so that they have the support they need as they make their transition to the responsibilities of adulthood.

3.92 Further changes to improve the quality and consistency of care planning, placement and case review for looked after children and the care and support provided to care leavers will be come into force on 1st April 2011.¹¹⁸ Guidance issued by the Department of Education¹¹⁹ summarises relevant legislation as follows:

- The functions (including powers and duties) of local authorities in relation to children who are looked after by them are set out in the CA 1989 as amended (principally by the Children (Leaving Care) Act 2000, the Adoption and Children Act 2002 and the Children and Young Persons Act 2008).
- Section 22(3) of the CA 1989 sets out the general duty of the local authority looking after a child to safeguard and promote the welfare of the child. This duty underpins all activity by the local authority in relation to looked after children.

Definition of a looked after child

3.93 A 'looked after child' includes children and young people under the age of 18 who have been accommodated under section 20 of the CA 1989 for a continuous period of more than 24 hours and those that are subject to a care order under section 31 of the CA 1989 or interim care order under section 31 of the CA 1989.

Looked after children and parental responsibility

3.94 Practitioners should note that local authorities do not acquire parental responsibility for those children and young people who are accommodated under section 20 of the CA 1989. In relation to those subject to a care order, the local authority shares parental responsibility with the parents. The guidance on care planning, placement and review of looked after children points out:

'Although a care order gives the local authority parental responsibility for the child, any person who is a parent or guardian also retains their parental responsibility and may continue to exercise it to the extent that their actions are not incompatible with the care order (as set out in section 2(8) and section 33(3)(b) of the 1989 Act.'¹²⁰

Support for care leavers

3.95 Local authorities are responsible for planning and continuing support to all care leavers until they reach the age of 21, and beyond this age, if the young person remains in an approved programme of education or training. (Support will continue if the young person is 'being helped with education or training, to the end of the agreed programme of education or training (which can take them beyond their 25th birthday).'¹²¹ Planning for transition is expected to start when the young person reaches the age of 16.

¹¹⁸These can be found at: www.education.gov.uk/childrenandyoungpeople/families/a0065502/care-planning-for-looked-after-children-and-care-leavers

¹¹⁹Volume 2 of the Children Act 1989 Guidance – Care Planning, Placement and Case Review regulations and statutory guidance ('the Care Planning Regulations') March 2010

¹²⁰1.21

¹²¹Department of Education 'Planning Transition to Adulthood for Care Leavers' Volume 3 of the Children Act 1989 Guidance and Regulations, October 2010, paragraph 2.4, implementation date 1st April 2011

3.96 The type of 'leaving care' support that local authorities must provide to a young person will vary depending on whether the young person is:

- aged 16 or 17 and continues to be a looked after child (referred to as an 'eligible child'),¹²²
- aged 16 or 17 and although is no longer looked after, is a 'relevant child',¹²³ or
- aged 18 or over and is a 'former relevant child'.¹²⁴

3.97 Chapter 2 of the guidance 'The Children Act 1989 Guidance and Regulations, Volume 3: Planning Transition to Adulthood for Care Leavers',¹²⁵ provides a summary of the definitions of these different categories of looked after children and the level of support that must be provided to them. Key aspects of the support provided to care leavers are the assessment of needs, a 'pathway plan', a regular review of this plan and the appointment of a personal adviser.

- Guidance on the care planning, placement and case review for young people aged 16 and 17 who are looked after children (i.e. they are an 'eligible child') is set out in 'The Children Act 1989 Guidance and Regulations Volume 2: Care Planning, Placement and Case Review' ('the Care Planning Regulations').¹²⁶ Chapter 5 outlines the planning requirements local authorities should follow to support such young people through the transition to adulthood.
- Volume 3 of the Children Act 1989 Guidance and Regulations, Planning Transition to Adulthood for Care Leavers' describes a comprehensive framework of assessment, care planning, intervention and case review that must be followed by local authorities to plan the support they will give to prepare 16 and 17 year olds for the time when they will not be looked after.

- The above guidance is due to take effect in April 2011, when the amendments introduced by the Children and Young People Act 2008 and regulations, will come into force. The Care Planning, Placement and Case Review (England) Regulations 2010 will apply to young people who are an 'eligible child'. The Care Leavers (England) Regulations 2010 will apply to young people who are 'a relevant child' or a 'former relevant child'.

Responsibilities of PCTs and local authorities for looked after children

3.98 The Guidance on care planning, placement and review of looked after children emphasises the importance of health in relation to a child's development. The responsibilities of PCTs and local authorities to support and promote the health of looked after children are set out in Statutory Guidance on Promoting the Health and Wellbeing of Looked After Children.¹²⁷ This guidance also contains detailed practice guidance to support the work of practitioners across agencies in carrying out these duties.

¹²² Defined as a 'looked after child' aged 16 or 17, who has been looked after for a total of at least 13 weeks which began after s/he reached the age of 14, and ends after s/he reaches the age of 16; Paragraph 19B of Schedule 2 to the CA 1989, and regulation 40 of the Care Planning, Placement and Case Review (England) Regulations 2010. These come into force on 1st April 2011

¹²³ Defined as a 16 or 17 year old who is not looked after but was before he or she ceased to be looked after, an 'eligible child' (see above); section 23A of the 1989 Act and regulation 4 of the Children (Leaving Care) (England) Regulations 2001

¹²⁴ Defined as a young person who is aged 18 or above, and either has been a relevant child and would be one if he were under 18, or immediately before he ceased to be looked after at age 18, was an eligible child: section 23C(1) of the 1989 Act.

¹²⁵ Department of Education, October 2010

¹²⁶ HM Government, March 2010

¹²⁷ Department of Health, November 2009. Available at: http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_108501

Transition and looked after children

3.99 Box 9 below sets out some key points on planning for transition:

Box 9: Planning transition for care leavers¹²⁸

- Planning for transition to adulthood must take place for every looked after child regardless of any other status that a child or young person may have.
- A “pathway plan” setting out how the local authority will prepare and support the young person for transition to adulthood must be in place for all looked after children aged 16 and 17 who have been looked after for at least 13 weeks after they reached the age of 14.
- Good pathway planning is critical and local authorities should prepare, in full consultation with young person, a pathway plan at the time the young person approaches 16. The pathway plan should map out the needs, aims and ambitions of the young person as they approach adulthood
- This is so that that the transition is positive and, so that where the young person remains entitled to care leaving support, there is a continuing focus on working with the young person and other agencies to achieve the best possible outcomes.

¹²⁸ See Department of Education’s guidance ‘Planning Transition to Adulthood for Care Leavers’ Volume 3 of the Children Act 1989 Guidance and Regulations, 2.1 and 2.2; and Guidance on care planning, placement and review of looked after children Paragraph 5.3;





Transition in Practice



4 This chapter considers aspects of the transition process that may present particular concerns or difficulties. It does so by setting out case scenarios and suggesting how the issues raised by these cases should be addressed.

4.1 Eight scenarios are included in this chapter:

- **Ann:** is a 16 year old who was admitted to hospital informally and is ready to be discharged from hospital.
- **Vicky:** is a 17 year old who was admitted to hospital under the MHA 1983. Prior to her admission she was a looked after child. She is now ready to be discharged from hospital.
- **John:** is almost 18 and is about to be discharged from hospital. He is worried because he has been told that CAMHS will not support him when he is 18 but he has been given very little information from his care team on what will happen to him when he is discharged from hospital.
- **Sunita:** is a 16 year old who has been waiting to be discharged from hospital for the last 3 months. However, this has been delayed because there is a dispute between various local authorities and PCTs on which of them is responsible for her care (prior to her admission to hospital Sunita was a looked after child).
- **Tanay:** is in year 12 and is a young person with special educational needs. This case has been included because young people with emotional and psychological problems may require additional support in this area. The MHA Code stresses that no child or young person 'should be denied access to learning merely because they are receiving treatment for a mental disorder'.¹²⁹
- **Parsa:** is 16 years old and is an unaccompanied asylum seeker. He was admitted to hospital under the MHA 1983 but is now ready to be discharged from hospital.
- **Patrick:** will soon be 18. He is currently on a Referral Order, having been convicted of robbery. He was detained under the MHA 1983 (section 2, followed by section 3) and has been diagnosed as having a psychotic illness.

- **Sandy:** will soon be 18. She is currently on a Youth Rehabilitation Order with Intensive Supervision and Surveillance. She does not have a clear diagnosis and is not likely to meet the threshold for adult mental health services.

Case Study 1: Ann

Ann

Ann is 16. She was admitted to the CAMHS unit informally. The doctor in charge of her treatment was satisfied that Ann was able to decide about her admission and treatment while in hospital. Ann has now been on the unit for four months and her care team consider that she no longer requires in-patient treatment.

However, Ann's mother cannot be found and she has had no contact with her father since she was 5 years old. This is not the first time this has happened – prior to her admission Ann had been living with her maternal grandmother, Cath for three months. Ann's mother had suggested this 'on a temporary basis' while she sorted out accommodation for herself and Ann. During the first month of Ann's admission, her mother had visited a couple of times but Ann has not seen or heard from her in the last two months. Her grandmother has heard nothing from Ann's mother, save for receiving a card from Australia two weeks ago, with no address being given. Ann and her grandmother have a good relationship and her grandmother would dearly love Ann to live with her, but feels that she would find it very difficult to cope, as she has increasing mobility problems.

¹²⁹ Department of Health, Code of Practice to the Mental Health Act 1983, 2008, Paragraph 36.77

Ann: Commentary

Informal admission to hospital

4.2 Ann is 16 and has agreed to her informal admission. Section 131(2) MHA 1983 provides that 16 and 17 year olds can consent to, or refuse, their admission to hospital if they have capacity under the Mental Capacity Act 2005.

Local authority involvement during Ann's stay in hospital

4.3 The local authority should be involved in Ann's case already. This is because the CAMHS unit should have notified the local children's social care services of Ann's admission, with the local authority taking action in response to this notification. Section 85 of the CA 1989 requires hospitals to inform the relevant local authority¹³⁰ if a child or young person aged 16 or 17 is likely to be accommodated in hospital for three months or more. (Section 86 makes a similar provision in relation to independent hospitals.)

4.4 Box 10 below sets out section 85(4) of the CA 1989.

Box 10: Local authorities' duties in relation to children and young people in hospital

Section 85(4) of the CA 1989 states that where the local authority has been notified that a child is likely to be accommodated in hospital for three months or more, it shall:

- a) take such steps as are reasonably practicable to enable them to determine whether the child's welfare is adequately safeguarded and promoted while he is accommodated by the accommodating authority; and
- b) consider the extent to which (if at all) they should exercise any of their functions under this Act [the CA 1989] with respect to the child.

4.5 The purpose of this provision is to enable the local authority to ascertain whether such children or young people's welfare is being adequately safeguarded and promoted and whether they or their family require services.¹³¹ (See also the MHA Code, paragraphs 36.80 and 36.81.) In addition paragraph 36.82 of the MHA Code states:

'Local authorities should be alerted if the whereabouts of the person with parental responsibility is not known or if that person has not visited the child or young person for a significant period of time. When alerted to this situation, the local authority should consider whether visits should be arranged.'

4.6 The local authority should consider what action it should take to promote contact between Ann and her mother (see paragraph 10 of Schedule 2 of the CA 1989 and discussion 4.7 - 4.9 below).

Planning Ann's aftercare

Ascertaining Ann's wishes and feelings

4.7 Someone needs to sit down with Ann to ascertain what she would like to happen. The care planning process needs to ensure that Ann is at the centre and that her wishes and feelings are the driving force for the decisions being made, for example has anyone checked if Ann wants to maintain contact with her mum given her lack of support whilst Ann has been in hospital? An advocate could support Ann here.

4.8 It appears that Cath is the only significant adult in Ann's life so it will be important to discuss with Ann whether she wants to continue to live with Cath and what would help that to happen. Due to all the different elements that need to be resolved for Ann, an advocate should be appointed to support Ann and ensure that the different strands of her care come together as Ann would like.

¹³⁰ This will be the local authority in which the child or young person was ordinarily resident before being admitted to hospital. If it appears that the child or young person was not ordinarily resident in any local authority, the relevant local authority will be the one in

which the hospital is situated (section 85(3) of the CA 1989). For independent hospitals, the authority notified will be the one in which the hospital is situated (section 86(1)).

4.9 Box 11 below provides general information on 'discharge from hospital'.

Box 11 Discharge from hospital: Duty to carry out an assessment of after-care needs

- All children and young people who have been admitted to hospital for assessment and/or treatment of their mental disorder should have an assessment of their needs, followed by a decision on the services to be provided to meet such needs.
- Aftercare for all patients should always be planned prior to their discharge whether they have been informal patients or detained under the MHA 1983 and whether or not the duty to provide after-care services (see section 11.7 of the MHA below) applies to them.
- The discharge planning should be within the framework of the Care Programme Approach (CPA), or its equivalent (See the MHA Code 27.11).
- The planning of after-care needs to start as soon as the patient is admitted to hospital.
- Chapter 27 of the MHA Code provides guidance on the duty to provide after-care to patients under section 11.7 MHA 1983.

Assessment: section 17 Children Act 1989

4.10 The local authority should be asked to carry out an assessment of Ann's needs on the basis that she is a 'child in need' under section 17 of the CA 1989. (This should link in with the local authority's duties under section 85 of the CA 1989 once they have been notified that Ann is in hospital (see paragraph 4.3 above). Ann falls within this definition because she is 'disabled' (the definition of disabled includes a child who 'suffers from mental disorder of any kind'). (In addition, she has no one with parental responsibility looking after her.)

Assessment: Section 2 of the Chronically Sick and Disabled Person Act 1970

4.11 As part of the assessment under section 17 of the CA 1989 the local authority must consider whether Ann might also benefit from services under section 2 of the Chronically Sick and Disabled Persons Act 1970 (for example, recreational and educational support, equipment and adaptations).

The Care Programme Approach

4.12 Ann's aftercare should be planned within the framework of the Care Programme Approach (CPA), or its equivalent. Standard 9 of the National Service Framework for Children, Young People and Maternity Services includes in its 'Markers of Good Practice', 'When children and young people are discharged from in-patient services into the community...their continuity of care is ensured by use of the "care programme approach"'. Refocusing the CPA highlights the importance of having a system similar to CPA for children and young people with mental health problems.

4.13 Accordingly, the CAMHS team should be using the CPA with such modifications as they have deemed necessary to meet the particular needs of children and young people.

Ann's accommodation needs

4.14 As part of their assessment under section 17 of the CA 1989, the local authority must consider Ann's accommodation needs and whether they have a duty to accommodate Ann under section 20 of the CA 1989 – in particular section 20(1) and 20(3) (These provisions are set out in Annex 1). In considering this the local authority will need to take Ann's wishes and feelings into account. Section 20(6) of the CA 1989 states that before providing accommodation under section 20, a local authority shall, 'so far as is reasonably practicable and consistent with the child's welfare':

¹³¹When in force, section 86A of the CA 1989 and regulations made under this section will introduce further visiting requirements, such as the frequency of visits and the functions of the local authority representatives.

- a) ascertain the child's wishes and feelings regarding the provision of accommodation; and
- b) give due consideration (having regard to his age and understanding) to such wishes and feelings of the child as they have been able to ascertain

4.15 It might be possible for Ann to live with her grandmother if Cath is given some support (and subject to Ann's wishes).

Assessing the needs of a potential carer

4.16 Cath has mentioned mobility problems – this may mean that she is entitled to a community care assessment for her own needs under section 47 NHS&CC Act 1990

4.17 Given that Cath is likely to be providing substantial care on a regular basis she could ask for a carers assessment under the Carers (Recognition and Services) Act 1995 (which is undertaken when the assessment of Ann's needs is being undertaken – and the results of that assessment will be taken into account when deciding on what services should be provided to Ann).

Does Ann have any other needs, for example education?

4.18 This will need to be explored with Ann. She is 16 and so may have left school. Alternatively she may still be at school and may like some help in liaising with her school. (See <http://education.gov.uk/16to19> for information on education and training provision for 16- to 19-year-olds.)

Human rights

4.19 Prompt action should be taken to address Ann's situation as it would appear that there is no reason for her to continue to be on the unit save that her accommodation has yet to be sorted.

Case Study 2: Vicky

Vicky

Vicky is 17. She had been 'voluntarily accommodated' prior to being admitted to her local CAMHS unit, initially voluntarily and then under the MHA 1983, after her mental health had been assessed as rapidly deteriorating, first under section 2 and then under section 3. She was also experiencing auditory hallucinations, very distressed and was refusing treatment.

That was a few months ago. Vicky's care team are very pleased with her progress and consider that she is ready to leave the unit and have agreed with Vicky how she can be supported by CAMHS when she is discharged. However a problem has arisen with the planning for discharge. Vicky had, somewhat reluctantly, agreed to return to live with her parents and she was due to leave the ward in a week's time. However, she was very distressed on her return from section 17 leave and told her care-co-ordinator that she refused to go back to her parent's home.

Vicky had in the past alleged that her father had abused her and her sister. Although the local authority investigated her allegations, they found no evidence of abuse. Vicky's sister denied that she had been abused and the forensic medical examination of Vicki was inconclusive. Vicky was not made the subject of a child protection plan.

Vicky refuses explain why she no longer wishes to live with her parents but it appears that her change of mind is due to a conversation that she had with her younger sister while on leave. Her parents have 'phoned the ward to say that they expect Vicky to return to live with them, as agreed in the discharge plan and say that 'once again' Vicky is simply seeking attention and should be ignored. Vicky is adamant that she cannot go back to her parent's home and becomes very distressed every time this is discussed.

Vicky: Commentary

Admission to hospital under the Mental Health Act 1983

4.20 Vicky is detained under section 3 of the MHA 1983. This means that section of the 117 MHA 1983 (After-care) will apply in relation to her discharge from hospital.

Local authority involvement during Vicky's stay in hospital

4.21 Given that Vicky had been 'voluntarily accommodated' by the local authority prior to her admission she would have been a 'looked after child' (see the definition at paragraph 3.93) If that is the case, the relevant local authority should have made arrangements to visit Vicky (see the MHA Code of Practice 36.80). The local authority should again consider the possibility of abuse within the family and decide what action to take. Vicky may also be a 'relevant child' – see discussion below.

Planning Vicky's aftercare

Ascertaining Vicky's wishes and feelings

4.22 Vicky's wishes and feelings must be sought and taken into account. (See paragraphs 2.41 – 2.44 above). This important because whilst she is in hospital, Vicky needs to feel like she is being treated as an individual and that the plans being made are all about her and reflect all her needs.

4.23 A key element to Vicky's case is about listening to what she is saying about not returning home and understanding why she is reluctant to do so. Her concerns require inquiries to be made as to whether any action should be taken to safeguard her welfare. If there are any further allegations of abuse, these should be responded to under section 47 of the CA 1989. Where would she like to live and what support does she think she will need for this to be successful?

4.24 If Vicky would like to consider returning home in the future then children's services could consider a family group conference to help facilitate this process.

Assessment: section 47 of the NHS & Community Care Act 1990

4.25 Aftercare services under section 117 of the MHA 1983 are 'community care services' under section 46 of the NHS &CC Act 1990, therefore Vicky is entitled to a community care assessment under section 47 of the NHS & CC Act 1990.

4.26 Under section 117 of the MHA 1983, the relevant health and social services authorities will be required to provide the after-care services that they assess Vicky to need.

Assessment: section 17 of the Children Act 1989

4.27 Vicky is a 'child in need' (she falls within this definition because she is 'disabled' - the definition of disabled child includes a child who 'suffers from mental disorder of any kind'). Accordingly the relevant authority would be expected to carry out an assessment under section 17 of the CA 1989. The Assessment Framework guidance on carrying out such assessments will apply (see Chapter 2 above).

4.28 Vicky's discharge planning should be within the framework of the Care Programme Approach (CPA), or its equivalent (See discussion above in relation to Ann and the MHA Code 27.11).

4.29 If there are any concerns about possible abuse or neglect then the guidance set out in Chapter 5 of Working Together to Safeguard Children (2010) should be followed.

4.30 Box 12 below sets out some key points in relation to discharge.

Box 12: Hospital Discharge: Key points

Thus various legislation and guidance apply to the planning for Vicky's discharge from hospital. However, the principles of the assessment are similar for all. The key points to note are:

- Vicky should have an assessment of her needs (section 17 CA 1989, section 47 NHS & CC Act 1990)
- Under section 117 MHA 1983 the health and social services authorities must provide the services that Vicky has been assessed to need
- No charges can be made for section 117 services

Vicky's accommodation needs

4.31 The provision of accommodation as an alternative to living with Vicky's parents will need to be considered.

- A referral to the housing authority could be made (section 47(3) of the NHS & CC Act 1990, section 27 of the CA 1989)
- Accommodation could be provided by the social services authority under section 20 of the CA 1989 (see sections 20(1), 20(3), s20(4)). Vicky's parents cannot prevent such arrangements from going ahead because the objections of those with parental responsibility do not apply when the person has reached the age of 16.

Local authorities' duties to care leavers

4.32 As mentioned above, as Vicky was 'voluntarily accommodated' by the local authority prior to her admission to hospital, she might be a 'relevant child' for the purpose of the CA 1989 as amended by the Children (Leaving Care) Act 2000. This would mean that she is entitled to additional help from the local authority. The legislation sets out the circumstances in which local authorities have a range of duties in relation to young people who have been in their care ('looked after children') and are 16 or 17 and the nature of those duties.

4.33 Vicky might fall within the category of "relevant child". Section 23A of the CA 1989 defines a 'relevant child' (see paragraph 3.96 above). In addition, regulation 3 of the Care Leavers (England) Regulations 2010 (due to come into force on 1 April 2011) prescribes a further category of relevant child who is:

- a) not looked after,
- b) aged 16 or 17, and
- c) at the time s/he attained the age of 16 was detained (i.e. detained in a remand centre, a young offenders institution or a secure training centre, or any other centre pursuant to a Court order), or in a hospital, and immediately before s/he was detained or in hospital s/he had been looked after by a local authority for a period or periods amounting in all to at least 13 weeks which began after s/he reached the age of 14.

4.34 Further information will be needed from Vicky to ascertain on what basis she was accommodated by the local authority. Children and young people who are accommodated under section of the 20 of the CA 1989 are 'looked after children' and accordingly the relevant local authority will have certain powers and duties in relation to them.

4.35 If Vicky is a relevant child the local authority will need to make arrangements to provide the necessary help to Vicky in accordance with the provisions of the CA 1989 and the Leaving Care (England) Regulations 2010. This will include:

- Appointing a personal adviser
- Undertaking a needs assessment
- Preparing a 'Pathway Plan'
- Providing or securing accommodation
- Assisting Vicky in achieving her goals (e.g. education)
- The authority must also keep in touch with Vicky

Does Vicky have any other needs, for example education?

4.36 Vicky's additional needs, such as education will need to be explored with her. In addition, there may be child protection issues that need to be investigated further.

Case Study 3: John

John

John is 17. His birthday is next month. He is currently on a CAMHS unit, having been admitted two months ago and at that time was assessed as having severe depression and a high suicide risk. John was admitted under section 2 of the MHA 1983 but it was decided that detention under section 3 of the MHA 1983 was not necessary as he was compliant with his treatment plan and willing to stay on the ward as an informal patient.

John's care team have told him that he will be discharged within the month. John is anxious about this as he is not sure what this will mean. He has been told that once he is 18 he will no longer receive support from CAMHS. A friend of his told him that adult mental health services have a very strict criteria and he might not get any help at all because they only work with people who are on 'the CPA'. John did not know what this meant and was concerned about the arrangements for his discharge. When he asked a member of this care team to explain what was likely to happen, she was extremely vague on what plans there were for his discharge.

John: Commentary

John's assessment of his health and social care needs

4.37 John will be a 'child in need' for the purpose of section 17 of the CA 1989 and therefore arrangements should be made for him to have an assessment of his needs under the CA 1989 (see commentaries for Ann and Vicky). However, given that John is very close to being 18, it would make sense for him to have a community care assessment under section 47 NHS&CCA 1990. This is because he is about to be 18 at which point he will be eligible for an assessment on the basis that he 'may be in need' of community services on his eighteenth birthday.

Eligibility for the Care Programme Approach

4.38 John's needs for aftercare must be assessed irrespective of whether or not he meets the criteria for the adult mental health care CPA. This is because the requirement to assess John's needs (whether under section 17 CA 1989 or section 47 NHS&CCA 1990 or both) is not affected by locally set eligibility criteria set for the CPA.

4.39 In any event, given that he has recently spent time in hospital, John may be eligible for the CPA. Standard 9 of the NSF states that the CPA should be used to ensure continuity of care from CAMHS to adult services. Furthermore, Standard 4 of the NSF (Growing up into Adulthood) states:

'When the mental health care of a young person is transferred to services for working age adults, a joint review of the young person's needs must be undertaken to ensure that effective handover of care takes place. This should be incorporated into a care plan under the Care Planning Approach arrangements for adult services.'

Informing young people of transition arrangements

4.40 The National CAMHS Review highlighted the importance of informing young people on the arrangements for their move from CAMHS to adult services.¹³² Their recommendations are set out in Box 13 below.

¹³² Children and Young People in Mind 7.74

Box 13: National CAMHS Review: recommendations on transition

Young adults who are approaching 18 and who are being supported by CAMHS should, along with their parents or carers:

- know well in advance what the arrangements will be for transfer to adult services of any type, following a planning meeting at least six months before their 18th birthday
- be able to access services that are based on best evidence of what works for young adults and which have been informed by the views of young adults
- have a lead person who makes sure that the transition between services goes smoothly
- know what to do if things are not going according to plan
- have confidence that services will focus on need, rather than age, and will be flexible.

Case study 4: Sunita

Sunita

Sunita is 17 years and 10 months old. She became a looked after child when she was 13 in 2006, due to the high level of domestic violence in the home and her mother's inability to cope with her and her siblings, but this was on a voluntary basis and no care order has ever been made. Initially Sunita was placed by her London Borough (Local Authority 1) in a foster home in Kent (Local Authority 2). Sunita had a long history of self harm, severe depression and eating disorders, and when she was 15 she was admitted to an inpatient unit because her BMI (body mass index) was dangerously low. Her admission was on a voluntary basis. The local eating disorder unit could not give her enough support, so she was sent to another CAMHS Eating Disorder Unit (EDU) 40 miles from her foster home (The EDU was situated in Local Authority 3). Her foster carers visited Sunita for the first six months, but when it became clear that her admission was likely to be lengthy, they stopped visiting and have had no contact since.

Sunita has been well enough to be discharged for 3 months, but her care plan is for her to be discharged to a community team with some outreach support from the Unit. Her local authority (Local Authority 1) no longer considers itself responsible for Sunita, as no care order is in place, and it does not wish to fund the supported living for her. However, Sunita has not lived with her family, nor had contact with them since she was 13, and does not feel safe to return to her former home.

Sunita has been offered a place in supported living accommodation close to the Eating Disorders unit (within Local Authority 3). However, she has been told that her place in the supported living accommodation cannot be agreed because she has no GP.

Local CAMHS will not accept the referral on the basis that Sunita is so close to transition, she is not known to them and they believe that her needs will be better served in the long term by

the adult service. Adult mental health services will not assess Sunita, as she is not yet 18. Local GPs will not accept her registration as she has no confirmed address, and no community clinician (i.e. psychiatrist to oversee her mental health care on her discharge) has been appointed.

The PCT where Sunita will live (PCT 1) refuses to fund the continued access to outreach support from the unit, as the commissioner believes that this is continuing care and should be funded by the PCT where Sunita was registered with a GP when she went into care (PCT 2). PCT 2's commissioner does not accept responsibility for Sunita's ongoing care on the basis that PCT 2 is not coterminous with the London borough which accommodated Sunita (Local Authority 1). The PCT (PCT 3) which is coterminous with Local Authority 1 is adamant that as Sunita was registered in a neighbouring PCT (PCT 2), then PCT 2 is the responsible commissioner despite the fact that PCT 3 has been paying for Sunita's inpatient care.

Sunita: Commentary

A. Overview and Summary

4.41 This case raises complex and serious issues, including infringements of Sunita's human rights. It has been included in this guide because it reflects the types of disputes that can occur when young people with mental health problems reach 18 and are in need of mental health care from adult services. Action needs to be taken immediately and Sunita's views must be sought.

4.42 Sunita is well enough to leave the in-patient unit but her discharge has been delayed for 3 months because the relevant PCTs and local authorities are in dispute over which of them has responsibility for Sunita's health and social care once she leaves hospital. Sunita is stated to be a voluntary patient but even if she is not detained in the EDU, being required to remain an in-patient because no alternative accommodation and support has been made available may raise human rights concerns.

4.43 For example, Sunita's continued stay on the unit means that she will be subject to restrictions that will engage Article 8 (right to private and family life) of the European Convention on Human Rights (ECHR). This together with the frustration of not being able to get on with her life and the worry of not knowing how long she might have to stay on the ward might have an adverse effect on her mental health.

4.44 Box 14 set summarises the key issues arising from Sunita's case

Box 14: Key points

- The planning of young people's transition from children's services to adult services needs to start early on – see the policies on transition summarised in Chapter 2.
- If there are any differences between the relevant agencies on which of them are responsible for the funding of a young person's care, practitioners should seek to ensure that these are identified and resolved as soon as possible.
- In relation to identifying PCT commissioning responsibilities – see the Department of Health's publication *Who Pays? Establishing the responsible commissioner*'
- In relation to local authorities, see the National Protocol on Inter-Authority Arrangements for Care leavers (2nd edition: revised July 2006).
- Such disputes must not be allowed to adversely impact the young person's care or cause any other detriment to that young person's welfare.
- Cases such as Sunita's, where the relevant agencies have not resolved their differences with the consequence that the young person remains in an in-patient environment which is no longer suitable for her needs, could lead to legal action, such as judicial review. This could be avoided by taking action promptly while also ensuring that any disputes on funding do not affect the young person's care and treatment.

B. Action to be taken

4.45 In a case of this kind, it is important to start by being very clear as to what good practice requires – and then to consider the legal position. The focus must be to secure care and support for Sunita that is appropriate to her needs. It is essential that Sunita’s views are sought and her care plan is arranged in consultation with her.

4.46 While the relevant public bodies will need to resolve their differences on which of them are responsible for the funding of Sunita’s care, this is secondary to addressing Sunita’s health, social care, and other needs. (See discussion on Transition: The Key Role of NHS Bodies and Local Authorities in Chapter 2 and the Primary care trust commissioning responsibilities in Chapter 3.)

Good practice

4.47 Box 15 highlights key good practice points.

Box 15: Good Practice

- Sunita is discharged into a supported community setting that meets her needs – most probably the supported living accommodation close to the EDU.
- Sunita’s needs are assessed in order to ensure that she has appropriate support on leaving hospital. (It may be that some aspects of the arrangements for Sunita’s transition can be put in place before the full assessment of her needs is completed, for example, consideration of Sunita’s education, employment and medium term housing needs may not be as immediately urgent as her move from the EDU to supported living accommodation).
- An advocate is appointed to support Sunita, particularly to help her to ensure that the various public bodies act in a collaborative and expedited way to secure her well being. She should also be informed of her right to seek legal advice (and helped to make contact with solicitors with relevant expertise).

The legal framework

4.48 The legal obligations can be divided into those of a general nature (often termed by lawyers as ‘public law’ obligations) and those of the detailed statutory provisions, such as the CA 1989 and the NHS Act 2006.

The public law obligation to act reasonably

4.49 As a matter of public law, the courts and both the Health and Local Authority Ombudsmen will require that all the public bodies that are involved in Sunita’s care (or may have responsibilities for her care) take prompt action to secure her short and medium term well-being: that they work together and avoid delay. Any failure to do this might be ‘maladministration’ and a breach of public law for which a judicial review in the High Court or a complaint to the Ombudsman could be made.

4.50 As a matter of public law the relevant public bodies should therefore agree a strategy for achieving this – for example that:

- a health care professional and a social care professional who are in close touch with Sunita ascertain (with her full involvement) what her immediate needs are, such as her discharge to supported living, and commission this service.
- that they all agree that one of them (most probably a local authority) would fund Sunita’s care arrangements (or two or more co-fund) and that they would then take steps to resolve any disagreement as to who is ultimately responsible for funding. (This may result in the agreement that the interim funding body is reimbursed all payments it has made, plus interest.)

4.51 The Ombudsmen in general consider that in such cases one public body must ‘grasp the nettle’ and secure the provision required, before entering into protracted negotiations with the other parties as to how the costs should be shared.¹³³

¹³³ See Disabled Children: A legal handbook, 175, referring to Complaint no 96/C/3868 against Calderdale MBC.

Specific legal issues

Local authority responsibility

4.52 Sunita was accommodated by Local Authority 1 when aged 13 in 2006 under section 20(1) of the CA 1989. As such, she was a child who was “looked after” by Local Authority 1. Sunita was ordinarily resident in Local Authority 1 when she was accommodated in a foster home in Local Authority 2 and so will remain the responsibility of Local Authority 1– even though, whilst so accommodated, she was placed in the area of another local authority and subsequently accommodated by the NHS (even if the EDU is an independent hospital, Sunita’s inpatient care is being funded by PCT 3).

4.53 Given that the period in which Sunita has been accommodated by Local Authority 1 is more than 13 weeks, she is a looked after child. If the local authority takes action (as it should do) and provides her with support before her 18th birthday, then she will be an eligible child, but even if this does not happen, Sunita will be a relevant child. This is because, as explained in the case of Vicky (see paragraph 4.33) regulation 3 of the Care Leavers (England) Regulations 2010 defines an additional group of relevant children who would have qualified for help under the CA 1989 but for the fact that on reaching 16 they are detained in (amongst other facilities) a hospital.

4.54 Whether or not Sunita is an ‘eligible child’ or a ‘relevant child’, she will be eligible for support under the CA 1989 (as amended by the Children (Leaving Care) Act 2000). Key elements of this support are a needs assessment, a pathway plan (which is regularly reviewed) and the appointment of a personal adviser. Steps to put these in place should have been taken within 3 months of Sunita’s 16th birthday.

4.55 Since it seems that Sunita is entitled to care leavers support under the CA 1989 (as amended by the Children (Leaving Care) Act 2000) and therefore has the right to a pathway plan, the question of whether the adult or children’s services

departments assess her under the CA 1989 or the NHS & Community Care Act 1990 should not be allowed to cause a delay in an assessment being undertaken. Local Authority 1 is responsible under this legislation to arrange her care in accordance with the CA 1989 (as amended by the Children (Leaving Care) Act 2000). However, as Sunita is approaching her 18th birthday both children and adult services have duties.

4.56 Given the abundant responsibilities on local authorities to manage such transitions it again, comes down to the public law obligations on the local authority. Local authority 1 has multiple duties to Sunita and it should ensure that it complies with these duties promptly and properly. Failure to do so could lead to proceedings for judicial review being pursued against it, for a failure to comply with its duties under the CA 1989. The courts have been particularly robust in their approach to local authorities’ duties in relation to the planning of support for care leavers.¹³⁴

4.57 Where a looked after child has been placed by one local authority in the area of another authority and if there is a dispute between the authorities as to responsibility (as seems to be intimated here) then there is a statutory process for resolving this under section 30(2) of the CA 1989. However, this must not be allowed to delay provision – one authority must take responsibility for ensuring Sunita’s care is arranged.

4.58 If there is any failure to do this, then judicial review proceedings would need to be issued against all relevant bodies – and be framed in terms of their failure to work together (for instance contrary to section 27 of the CA 1989, and section 11 of the CA 2004) so as to promote the Sunita’s well-being. It is not her responsibility, nor that of her advocate/advisers to work out who is responsible. There is however a National Protocol on Inter-Authority Arrangements for Care leavers (2nd edition: revised July 2006) that should be invoked by the councils to sort this out.

¹³⁴ See for example R (J) v Caerphilly CBC [2005] EWHC 586 (Admin); (2005) 8 CCLR 255

NHS responsibilities¹³⁵

4.59 Whether Sunita's needs are assessed under the CA 1989 or under section 47 of the NHS&CCA 1990, the local authority carrying out the assessment can seek the assistance of health bodies, including PCTs and NHS Trusts and NHS Foundation Trusts. NHS bodies should comply with a local authority's request for assistance unless this is not compatible with their statutory functions.

4.60 Sunita is likely to have ongoing mental health needs (and possibly other health care needs). It will therefore be necessary for her needs to be assessed before she is discharged from hospital.

4.61 Unlike a local authorities' duty to assess under section 47 of the NHS&CCA 1990, there is no explicit duty on NHS bodies to carry out an assessment of an individuals' health care needs. However, as discussed in Chapter 3 above PCT's have responsibilities to provide comprehensive health services and carrying out assessments of individuals' needs will be an essential part of their statutory functions.

4.62 Accordingly, the relevant PCT should ensure that an assessment of Sunita's health care needs are undertaken in order to facilitate her safe discharge from hospital. This can be undertaken by others on behalf of the PCT, for example Sunita's care team at the EDU.

4.63 The relevant PCT should seek to resolve the current difficulty over whether CAMHS or adult mental health services will take responsibilities for Sunita's need for ongoing mental health care when living in the community. Once Sunita is registered with a GP (see below), the GP should also seek to resolve this question.

4.64 Given that Sunita is very nearly 18 and the care provided to her is about to change significantly (she is about to leave hospital), it would probably make sense for adult mental health services to be involved at this stage, rather than CAMHS. However, these decisions need to be made now so that arrangements can be made for Sunita's discharge.

PCTs responsibilities

4.65 If there is a dispute between PCTs as to which is responsible, practitioners should refer to the Department of Health's publication *Who Pays? Establishing the responsible commissioner* for guidance.¹³⁶

4.66 In cases such as Sunita's, it may not be clear which PCT is responsible. She has been a looked after child for a considerable number of years, with many changes to her living arrangements and with a number of local authorities and PCTs involved. This question will need to be resolved between the PCTs and it will be important for the agencies to work together to do so.

4.67 They must also ensure that such discussions on responsibilities for Sunita's care (including responsibilities for paying for such care) do not delay or impair Sunita's care arrangements. Failure to work together to resolve this, with no agency taking on the responsibility of safeguarding and promoting Sunita's welfare could lead to judicial review proceedings being issued against all relevant bodies (being framed in terms of their failure to work together to promote the well-being of Sunita, contrary to section 82 of the NHS Act 2006 and section 10 of the CA 2004).¹³⁷

NHS Continuing Healthcare

4.68 Whether or not Sunita is to be funded by a local authority or the NHS (if held eligible for NHS continuing care funding) is not something that should in anyway interfere with the arrangements for her discharge from the EDU and her immediate care arrangements.

4.69 If the PCT and the local authority are in disagreement as to their respective responsibilities – they must invoke their 'local disputes resolution process' – which must include an 'agreement on how funding will be provided during the dispute, and arrangements for reimbursement to the agencies involved once the dispute is resolved'¹³⁸

¹³⁵ See Chapter 2 and Chapter 3 above. The NHS duty on transition is considered at para 10.77 – 10.81 of the Disabled Children's Handbook.

¹³⁶ See also Statutory guidance on promoting the health and well-being of looked after children 2009 para 9.5 et seq.)

4.70 The Mental Health Trust coterminous with the local authority where Sunita will live should seek to resolve the current difficulty over whether CAMHS or adult mental health services will take responsibilities for Sunita's need for ongoing mental health care when living in the community. Once Sunita is registered with a GP, the GP should also seek to resolve this question.

GP registration

4.71 Arranging Sunita's registration with a GP would need to be dealt with in the pathway plan.

4.72 Sunita is entitled to register with a GP in the area in which she intends to live. The current care plan proposes that Sunita will be placed in supported living accommodation. Sunita can therefore request that she is registered with a GP in the area in which the supported living accommodation is situated.

4.73 If this would be helpful to her, Sunita should be given support in making this request, by her key worker or advocate. However, it is not clear whether Sunita agrees with this placement or whether, this will be considered to be the most appropriate placement for her once she has received an assessment under section 17 and section 20 of the CA 1989. These points will need to be addressed.

4.74 If there is no GP who will accept her registration, the registration department of the PCT where she will be living has a duty to allocate a GP. Sunita has been told that she cannot register with a GP because she has no 'community clinician' (i.e. psychiatrist to whose care she would be discharged into the community). It is not clear what is meant by this but in any event, this is not a reason for refusing registration.

Case Study 5: Tanay

Tanay

Tanay is in Year 12 at his local school and wants to study tourism at college after he leaves school. He has moderate learning difficulties and severe dyslexia and has had a statement of special educational needs since Year 2.

Four years ago he suffered from severe depression (following being discriminated against for a reason relating to his disabilities by a teacher who has since apologised and received equalities training along with all staff), which has recurred every year since then. He was referred to CAMHS as a result when he had to have some time off school and now sees them every couple of months.

Parts 2 and 3 of Tanay's statement (referring to special educational needs and special educational provision respectively) were amended at his Annual Review three years ago to reference his mental health difficulties and the provision needed to meet these, namely flexible teaching and homework arrangements as recommended by CAMHS.

Tanay's headteacher, Mrs Gupta, makes arrangements for the Annual Review of Tanay's statement of special educational needs, having received a list from the Local Authority of all the children with statements at her school who require an annual review that term. The purpose of the Annual Review is to see whether a child or young person's statement is still appropriate, or may need to be amended or should cease to be maintained. Mrs Gupta requests written advice relating to these and other key issues from Tanay's parents, and all other persons she considers appropriate (the local authority not having specified anyone) which include Tanay's teacher, his teaching assistant, and a representative from CAMHS and the Connexions Service who are all invited to the Annual Review meeting (along with Tanay and a representative from the Local Authority) and given copies of each other's written advice.

¹³⁷ See paragraph 5.10 – 5.15 of Disabled Children – A Legal Handbook, which cites a couple of Ombudsmen's cases on this point.

¹³⁸ See National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care Framework, 2009, paragraph 161.

At the Annual Review, all agree that Tanay is making excellent progress and that his statement should continue until his Annual Review next year although there is no reason to believe it will not stay in force until it ceases when he leaves school at the end of next school year. His Transition Plan which was first drawn up at his Year 9 Annual Review was amended after discussion with everyone by Ms Green from Connexions who also advises she will be in touch to arrange Tanay's section 139 assessment for Year 13 so that they can discuss his college choices and she can support him with these. After the meeting Mrs Gupta prepares her written Annual Review report for the Local Authority together with recommendations that Tanay's statement should continue to be maintained without amendment. The Local Authority considers her report and recommendations which it agrees with and informs all relevant parties in writing of its decision accordingly.

Tanay: Commentary

Children and young people with special educational needs

4.75 In the Education Act 1996 generally a child is someone who is not over compulsory school age but for children with special educational needs a child is someone who is under 19 but a registered school pupil. The definition is therefore different to that contained in the CA 1989 (see paragraph 1.13 above). In this section the term 'young person' refers to an older teenager who is still at school.

4.76 Under the Education Act 1996 (Part 4 of which is concerned with special educational needs), a child has special educational needs if they have a learning difficulty which calls for special educational provision to be made for them.

- Children / young people will have a 'learning difficulty' if they:

- a) have a significantly greater difficulty in learning than the majority of children of the same age; or
 - b) have a disability which prevents or hinders them from making use of educational facilities of a kind generally provided for children of the same age in schools within the area of the local education authority; or
 - c) are under compulsory school age and fall within the definition at a) or b) above or would do if special educational provision was not made for them.
- They will not be regarded as having a learning difficulty simply because they speak a different language at home.

Special Educational provision

4.77 'Special Educational provision' means:

- a) for children of two or over, educational provision which is additional to, or otherwise different from, the educational provision made generally for children of their age in schools maintained by the local education authority, other than special schools, in the area
- b) for children under two, educational provision of any kind¹³⁹

Differences in definitions

4.78 It is important to note the difference in definitions between legislation. For example, a child or young person may be disabled within the meaning of the Equality Act 2010¹⁴⁰ or the CA 1989¹⁴¹ but not have a learning difficulty under the Education Act 1996 and vice versa.

Duties of local authorities

4.79 Local Education Authorities (now grouped together with children's social care services as Children's Services and referred to as 'local authority' in the case example above) have a duty to identify those children for whom they are responsible who have special educational needs which require them to make special educational provision.¹⁴²

¹³⁹ Section 312 of the Education Act 1996

¹⁴⁰ Section 6 and Schedule 1 of the Equality Act 2010

¹⁴¹ Section 17 (11) of the Children Act 1989

¹⁴² Section 321 of the Education Act 1996

Special Educational Needs Framework

4.80 The following paragraphs provide a brief summary of the Special Educational Needs Framework; full details of the Framework are set out in the Special Educational Needs Code of Practice 2001. Enforcement is not covered here. Information about appealing to the First –Tier Tribunal (Special Educational Needs and Disability) can be found at www.sendist.gov.uk. In addition there are separate rights of redress by way of judicial review, for example about the provision in Part 3 of a statement not being put in place, as well as complaints to the Secretary of State and the Ombudsman.

4.81 Not all children with learning difficulties may require a statement of special educational needs (defined in Box 16 below). There is a ladder of support, as follows:

- starting with School Action (or Early Years Action), requiring no support from outside school,
- School Action Plus (or Early Years Action Plus) at which external support may be sought.
- a statement of special educational needs which may be made following a request for a statutory assessment of a child's special educational needs by a child's parents, the school or another agency.

Box 16: A Statement of Special Needs

A statement is in a prescribed form and sets out the child's details (Part 1), their special educational needs (Part 2), the special educational provision required to meet these needs (Part 3), the school, type of school or other institution where the provision will be made (Part 4) and the child's non educational needs and non-educational provision in Parts 5 and 6 respectively; appendices contain all the relevant reports and other information. It is legally binding unlike a note in lieu which a local authority may issue instead of a statement; although neither a statement nor a note in lieu may be issued. The local authority has an absolute duty to arrange the special educational provision set out in Part 3 of the statement.

Request for a statutory assessment

4.82 A statutory assessment must be carried out in order to decide whether a child or young person requires a statement of special educational needs. A request for a statutory assessment can be made at any time; a child does not need to be on School Action (or Early Years Action) or Schools Action Plus (or Early Years Action Plus) before a request can be made. At that stage the local authority must carry out such an assessment if it considers that the child has special educational needs and will probably need a statement, in which case it must seek written parental, educational, medical, psychological social services and any other advice which it thinks is desirable.

4.83 Within two weeks of the conclusion of the assessment process, the local authority must either serve a copy of the draft statement on the child's parent or notify the relevant party of its decision not to make a statement.

Review of Statements

4.84 Statements must be reviewed every year and a head teacher when preparing for the meeting must request written advice from the child's parents, anyone specified by the authority and anyone else the head teacher considers appropriate. Health authorities and social service departments must respond to such a request for written advice (section 322(1) of the Education Act 1996) subject to the exceptions in section 322 (2) and (3)). A statement will lapse when the child leaves school to work or go into further and higher education; a local authority may be ordered to cease to maintain a statement by a tribunal or decide that it is no longer necessary to maintain a statement.

4.85 Box 17 below describes the Year 9 annual review.

Box 17: The Year 9 Annual Review

At a Year 9 Annual Review, a Transition Plan is drawn up for the first time by the Connexions Service. A local authority must ask for information from social services as to whether the child is disabled and might therefore require services from the local authority when leaving school. Health professionals who manage the care of the child should provide written advice for the Transition Plan about any services that the child is likely to require and discuss arrangements for transfer to adult health care services with the child, their parents and their GP.

Duty to co-operate

4.86 Generally, section 322 of the Education Act 1996 requires health authorities and local authority departments to help the education department in relation to special educational needs. This requirement is similar to the duty to co-operate under section 27 of the CA 1989 (discussed in Chapter 2 above).

Post-16 education or training or higher education

4.87 This case study references a Learning Difficulty Assessment ('LDA'). Under section 15ZA of the Education Act 1996 as amended by the Apprenticeships, Skills, Children and Learning Act 2009 ('the ASCLA'), local authorities have a duty to secure enough suitable training and education to meet the reasonable needs of people who are in their areas who are either over compulsory school age but under 19 or who are over 19 but under 25 and have an LDA. There are likely to be further developments in this area but the current position is set out below.

4.88 A local authority has a duty (under section 139A of the Learning and Skills Act 2000) to arrange an LDA for all those young people for whom they maintain statements of special educational needs at some point during the school year, where the authority believes they will go into post 16 education or training or higher education:

- at the end of their last compulsory year of education if under compulsory school age or
- during or at the end of the school year if over compulsory school age

In addition, a local authority can arrange an LDA at any time for a person who is in their last year of compulsory schooling or under 25, who appears to the authority to have learning difficulties¹⁴³ and who the authority believes is receiving or is likely to receive post 16 education, training or higher education. There are similar provisions for those people educated at home.

4.89 Statutory guidance governs how LDAs should be carried out. Currently they are commonly carried out by staff from the Connexions Service.¹⁴⁴

After multi-agency input, a written report, taking into account the young person's wishes, should be produced setting out the young person's educational and training needs and the provision required to meet these needs. As highlighted in the case study, Transition planning (currently with the involvement of the Connexions Service) must start in Year 9 but the section 139 assessment is carried out in the last year of school.

¹⁴³ As defined in section 15ZA(6) and (7) of the Education Act 1996 and similar to the definition in section 312 of the Education Act, namely a person with a significantly greater difficulty in learning than the majority of people of their age or a person with a disability which either prevents or hinders them from making use of facilities of a kind generally provided by institutions providing education or training for persons who are over compulsory school age; they will not be regarded as having a learning difficulty simply because they speak another language at home.

¹⁴⁴ A national information and advice service for young people aged 13-19 regardless of need and for those aged up to 24 with a learning difficulty / disability.

Discrimination

4.90 The case study references an example of disability discrimination that was resolved prior to the implementation of the Equality Act 2010. However it highlights that discrimination can and does take place. Applicants, pupils and in some situations former pupils in a schools context (and applicants, students and in some situations former students in a further and higher education context) are protected from discrimination and harassment on the basis of applicable protected characteristics, including disability, under Part 6 of the Equality Act 2010. Education providers also have a duty to make reasonable adjustments for disabled applicants, pupils, students and in some cases former pupils and students. The characteristics that are protected, the way the duties operate and the activities they apply to vary according to the type of education provider.

4.91 Appendix 1 provides further information about how the Equality Act 2010 applies to service providers and those exercising public functions (Part 3) as opposed to education providers (Part 6). Local authorities have duties in an education context under both Part 3 and Part 6.

Case study 6: Parsa

Parsa

Parsa is aged 16. He is Iranian and is seeking asylum in the UK. His father is dead. His mother and other close family members do not know of his whereabouts and he is unable to contact them.

Parsa has been detained under section 2 of the MHA 1983. He was admitted to hospital for assessment following a serious attempt to harm himself and his refusal to engage in any planned assessment. Prior to his current admission his only contact with mental health services was via a referral from his GP to the local CAMHS. The reason that he was referred to CAMHS was because of indicators that he might be suffering from depression and PTSD (Post Traumatic Stress Disorder).

Prior to his admission to hospital, Parsa was living in a guest house with other young people whose circumstances are similar to his own. He was receiving support and financial assistance from the local authority. He had become an 'eligible child' for the purpose of the CA 1989 (as amended by the Children (Leaving Care) Act 2000) and the leaving care team of the local authority had allocated a social worker to work with him.

Following his in-patient assessment by tier 4 CAMHS Parsa has now been diagnosed as suffering from a depressive illness and PTSD. He has been experiencing flashbacks, low mood, disturbed sleep and appetite and self harm. He is now more settled and is compliant with medication. The care and treatment plan for Parsa is to complete the process of assessment and to provide a safe environment whilst this assessment process took place.

His responsible clinician (the clinician responsible for his in-patient care and treatment whilst he is a detained patient) still regards Parsa as unstable, however he wants to arrange for his return to the community as soon as a suitable 'care package' can be put in place.

Parsa wants to return to the accommodation where he had been living and to return to college.

In summary Parsa is an unaccompanied minor seeking asylum who has experienced traumatic events within the last year including witnessing the death of his father. He is subject to a number of external stresses including being socially isolated, separated from his family and experiencing continuing uncertainty about his immigration status. He is a looked after child and has received significant support and assistance from the local authority since he came to the UK, in particular from the leaving care team.

Parsa: Commentary

Overview

4.92 Planning for Parsa's discharge and aftercare should commence immediately and this will require urgent liaison with CAMHS, adult mental health services and the local authority responsible for his care as a looked after child. His eligibility for the CPA should be established and a care co-ordinator allocated. A multiplicity of professionals and agencies have been involved in his care and treatment. These include: primary health care, the local authority responsible for his care via their 'leaving care team', adult mental health services and CAMHS. Collaborative work between all the agencies involved is essential to ensure that Parsa's needs continue to be met. In meeting his needs, trying to ensure contact with others in the Iranian community is likely to be important.

Unaccompanied asylum seeking child

4.93 Where a child or young person under the age of 18 seeking asylum presents as unaccompanied, with there being no adult to assume responsibility for his or her care, it is likely that that child will fall within the definition of a child in need in section 17(10) of the CA 1989 and will also be entitled to the provision of accommodation under section 20(1) of the CA 1989. There may however be circumstances where the child

has somewhere to live, for example with a relative or friend, and in those cases the duty in section 20 of the CA 1989 will not arise.

The Children Act 1989

4.94 Prior to his admission to hospital, the local authority was providing Parsa with support, having assessed his needs under section 17 of the CA 1989. As part of their assessment, the authority considered Parsa's accommodation needs and secured his accommodation under section 20 of the CA 1989 – in particular section 20(1) and 20(3) (These provisions are set out in Annex 1). In doing so, the local authority took Parsa's views into account in accordance with section 20(6) CA 1989 (discussed in Ann's case above).

4.95 The duty of the local authority under sections 17 and 20 of the CA 1989 applies in relation to a child in need 'within their area'. The duty for accommodating and supporting unaccompanied asylum seeking children will fall to the local authority within whose area the child is residing, or has just arrived.¹⁴⁵ In this case the local authority where Parsa had arrived accepted responsibility for him.

4.96 If there was a dispute about Parsa's claimed age, the local authority may conduct a detailed age assessment. The UK Border Agency must accept a properly carried out assessment of age.¹⁴⁶ This was not thought to be necessary in his case.

Assessing Parsa's health, social care, housing and educational needs

4.97 Parsa is detained under section 2 of the MHA 1983 and is therefore not entitled to aftercare services under section 117 of the MHA 1983. (If he were to be detained under section 3 of the MHA 1983 he would be entitled to section 117 aftercare.) This however will not have any effect on the duties owed to him by the local authority under the CA 1989. Prior to his admission to hospital Parsa was already looked after.

¹⁴⁵ See Department of Health guidance Ordinary residence: Guidance on the identification of the ordinary residence of people in need of community care services, England, March 2010

¹⁴⁶ Guidance on Disputed Age Cases, UK Border Agency: www.ukba.homeoffice.gov.uk

4.98 A reassessment of Parsa's needs on the basis of his mental health difficulties should be undertaken. Consideration should be given to whether or not the guest house where he had been living prior to his admission to hospital is suitable for his needs on his return to the community

4.99 Parsa's educational needs should also be considered. His attendance at college is an important framework for enhancing resilient behaviour as well as monitoring his academic progress and developing language skills. The provision of interpreting services may be important for him whilst he develops his language skills.

Support to care leavers

4.100 Parsa was a looked after child at the time that he was admitted to hospital. On his discharge he will once again become a looked after child if the local authority provide him with accommodation under section 20 of the CA 1989 and therefore an 'eligible child' for the purpose of the care leaving support provisions under this Act (see the section on 'Looked After Children' in Chapter 3 above). In relation to an 'eligible child', the local authority:

'...has the same statutory obligations in relation to eligible children as they do towards other children looked after by them, including a duty to maintain their care plan, carry out regular reviews of their case and appoint an independent reviewing officer for the child.'¹⁴⁷

4.101 In addition they must:

- Undertake a needs assessment with a view to determining what advice, assistance and support it would be appropriate for them to provide him (both while he is still looked after and after he stops being looked after)
- Prepare a 'Pathway Plan' and keep this under regular review
- Appoint a personal adviser

4.102 Box 18 below provides further information on care leavers who are also UASC.

Box 18: Care leavers who are also unaccompanied asylum seeking children

- Unaccompanied asylum seeking children (UASC) making the transition from care to adulthood have both a leaving care status and an immigration status in addition to their placement and accommodation, education, health, financial, religious and cultural needs. Planning transition to adulthood for UASC is a particularly complex process that needs to address the young people's care needs in the context of wider asylum and immigration legislation and how these needs change over time.
- Pathway planning to support a UASC's transition to adulthood should cover all areas that would be addressed within all young people's plans as well as any additional needs arising from their specific immigration issues. Planning may initially have to be based around short term achievable goals whilst entitlement to remain in the UK is being determined.
- Pathway planning for the majority of UASC who do not have permanent immigration status should initially take a dual or triple planning perspective, which, over time should be refined as the young person's immigration status is resolved. Planning may be based on:
 - a transitional plan during the period of uncertainty when the young person is in the United Kingdom without permanent immigration status;
 - longer term perspective plan in the United Kingdom should the young person be granted long term permission to stay (for example through the grant of Refugee Status); or
 - a return to their country of origin at any appropriate point or at the end of the immigration consideration process, should that be necessary because the young person decides to leave the UK or is required to do so.

Extracts from: Children Act Guidance and Regulations Volume 3: Planning Transition to adulthood for Care Leavers (Paragraphs 6.20 – 6.22) (This guidance comes into force in April 2011.)

¹⁴⁷ Department of Education, Planning Transition to Adulthood for Care Leavers' Volume 3 of the Children Act 1989 Guidance and Regulations, page 5

Case Study 7: Patrick

Patrick

Patrick is 17 years old. Shortly after his 17th birthday, Patrick was given a 12 month Referral Order (he had pleaded guilty to robbery). However, a few weeks later, Patrick became very unwell and was admitted to the local CAMHS psychiatric inpatient unit, having experienced his first episode of psychosis. He was admitted under section 2 of the MHA 1983 but was further detained under section 3 of the MHA 1983. He was discharged from hospital two and a half months later and went back to live with his parents, both of whom are very supportive of Patrick.

Patrick's care plan was for him to continue to take medication to manage his psychotic symptoms, which would be monitored by the local community CAMHS. This was in addition to keeping in touch with his YOT worker, as required by his Referral Order.

In the months subsequent to his discharge from hospital, members of the YOT team and the CAMHS community team had worked intensely with Patrick. One of the main problems had been that Patrick kept failing to turn up to his appointments. However, this improved when both teams used a more assertive outreach model of care, offering Patrick regular home visits, a high level of communication with his family and sending him text messages to remind him of the time and place of his next appointment.

When Patrick was 17½, his CAMHS care co-ordinator contacted the local Early Intervention in Psychosis (EIP) team. (In Patrick's area, young people with psychosis are seen by CAMHS until the age of 18, and the Early Intervention Psychosis Team is available for 18-35 year olds.) This was because Patrick's care team were of the view that he would need on-going support for his mental health problems and the local transition protocol requires the planning for a young person's transfer to adult mental health services to start 6 months before the young person's 18th birthday. However, Patrick's care team were told

that there was no need for the EIP team to carry out a new assessment as Patrick had a clear diagnosis and a care plan that was already in place and working well. Due to pressure on resources it was agreed that the transitions meeting at which the EIP team would consider this referral would be delayed until a month before Patrick was 18. The meeting would be attended by Patrick (and his parents, if he so wished), Patrick's CAMHS team, the YOT and the EIP team.

It is now one month before Patrick's 18th birthday and Patrick's CAMHS team has contacted adult mental health services to set up the transition meeting with the EIP team.

Patrick: Commentary

Overview

4.103 Patrick was detained under section 3 of the MHA 1983 and therefore his discharge arrangements and continuing care from CAMHS should have been made in accordance with section 117 of this Act. (See comments made in the case of Vicky above). As discussed in the case of Ann (see above), such arrangements should also be arranged within the CPA, with such modifications as the local CAMHS have deemed necessary to meet the particular needs of children and young people.

4.104 Patrick has been diagnosed as having a psychotic illness and assessed by his CAMHS team as needing on-going mental health care. The EIP team will want to review the CAMHS team's assessment and diagnosis of psychosis but subject to any disagreement on this, Patrick is likely to be accepted by the EIP team.

4.105 The YOT will need to refer Patrick to the Probation Service, given that his Referral Order continues beyond his eighteenth birthday (albeit only a week or so).

4.106 At the moment Patrick is living with his parents and there is no indication that he was ever accommodated by the local authority, so the provisions under the CA 1989 concerning support for care leavers will not apply.

Ongoing duty under section 117 of the Mental Health Act 1983

4.107 Under section 117 of the MHA 1983 the relevant PCT and local social services authority are under a duty to provide such aftercare services as the person is assessed to need, until such time as both agencies are satisfied that the person is no longer in need of such services. In Patrick's case, it is likely that the mental health agencies will agree that he requires on-going mental health care and that this is to be provided by the EIP team.

4.108 However, Patrick's wider health and social care needs should also be considered with him, as well as any housing needs. For example, Patrick may wish to return to education, or receive vocational training or have some help to get a job. Refocusing the CPA states:

'The assessment and planning process should aim to meet the service user's needs and choices and not just focus on what professionals and services can offer. It should address a person's aspirations and strengths as well as their needs and difficulties.'¹⁴⁸

4.109 As discussed at above in Chapter 3 when a person's after-care needs are being assessed under section 117, this is a 'community care assessment' under section 47 of the NHS&CCA 1990.

Parents and Carers

4.110 It would seem that Patrick's parents have been involved in his care. The EIP team will need to discuss with Patrick what involvement, if any, he would like his parents to have in his continued care. Patrick may be happy for his parents to be involved in all the discussions, or prefer them to have limited information. (See Chapter 18 of the Code of Practice to the MHA 1983, in particular paragraphs 18.10-18.13.)

4.111 Patrick's parents may be eligible for support if they are providing him with 'a substantial amount of care on a regular basis' (See Carers assessments in Chapter 3 above).

Case study 8: Sandy

Sandy

Sandy is 17 years old and will be 18 in two months time. She has a long history of offences, including robberies and drug-related offences. She has a history of familial sexual abuse and is vulnerable to sexual exploitation from local gang members.

She was given a Youth Rehabilitation Order with Intensive Supervision and Surveillance. As part of this order, Sandy agreed to see the local CAMHS team.

Sandy has a range of complex problems that include ADHD (attention deficit hyperactivity disorder) and PTSD (post traumatic stress disorder). She has symptoms indicative of 'complex trauma', attachment issues, interpersonal relationship difficulties and conduct disorder. She also tends to move from place to place and says that she has nowhere that she feels is 'home'. Local children's services have had contact with her for many years but have found it difficult to put a sustainable plan in place (Sandy has a deep mistrust of professionals). Sandy was accommodated numerous times under section 20 of the CA 1989 between the ages of 14 and 17 but at the moment she is 'staying with friends'.

During their work with her, CAMHS suggested the option of Sandy taking medication for her ADHD but on the few occasions she agreed, this was not a successful as her compliance was intermittent and she was also self-medicating with cannabis and alcohol.

It has taken a long time for CAMHS and YOT to build a relationship with Sandy, but with perseverance and consistency she has come to trust the team members and is finally starting to engage.

Sandy's care team are concerned about Sandy's future care. They will refer her to adult mental health services but it is not clear whether the local Community Mental Health Team (CMHT) will be willing to accept her. This is because ADHD is not generally dealt with by adult mental health services. While they

¹⁴⁸Refocusing the Care Programme Approach Page 18

could possibly refer Sandy to a clinic that works with people with PTSD, her CAMHS team are concerned that Sandy may not be ready for this type of treatment, which would be intensive trauma focused work. The CAMHS team are also concerned that Sandy may not want to be part of the adult mental health services as she does not regard herself as 'mentally ill' and at 18 would find it difficult to sit in a clinic with older patients with chronic mental health problems. In addition, she takes a very long time to learn to trust professionals, so she may not turn up to appointments even if she were accepted by adult mental health services.

Sandy: Commentary

Overview

4.112 Unlike Patrick, Sandy does not have a clear diagnosis that would meet the threshold for adult mental health services. Her care team are concerned that she will not be accepted by adult mental health services and in any event, they are doubtful whether the type of service they offer will be acceptable to Sandy. However, irrespective of her eligibility for local adult mental health services, it is clear that Sandy is in need of on-going support when she becomes 18. She has been accommodated by the local authority and therefore she may be entitled to care leaving support under the CA 1989 as amended by the Children (Leaving Care) Act 2000. She will also be entitled to a community care assessment under the NHS&CC Act 1990.

Support to care leavers

4.113 Given that on numerous occasions, between the ages of 14 and 17, Sandy was accommodated under section 20 of the CA 1989, she is likely to be a 'relevant child' for the purpose of the CA 1989 (as amended by the Children (Leaving Care) Act 2000). In assessing her entitlement to leaving care support, the local authority previously responsible for her care will need to assess whether she had been

accommodated (and therefore looked after) for 13 weeks from the age of 14. This 13 week period need not have been consecutive and must have included some time after Sandy's 16th birthday.

4.114 This means that the local authority that last looked after her will be required to put in place arrangements to support Sandy during her transition to adulthood. The local authority's duties include: preparing an assessment of Sandy's needs; preparing a 'pathway plan' and keeping this under review. The local authority must also appoint a 'personal adviser' to provide support to Sandy. Personal advisers have a wide range of functions including providing practical advice such as information about education, training and employment opportunities. The local authority must also:

'...safeguard and promote the relevant child's welfare by maintaining him, providing him with or maintaining him in suitable accommodation and providing assistance in order to meet his needs in relation to education, training or employment.'¹⁴⁹

4.115 The Children Act 1989 Guidance and Regulations, Volume 3: Planning Transition to Adulthood for Care Leavers, due to come into force in April 2011, provides detailed guidance on the responsibilities of local authorities to care leavers.¹⁵⁰ Key points arising from this guidance are as follows:

- Planning for transition to adulthood 'must take place for every looked after child regardless of any other status that a child or young person may have' (Paragraph 2.2)
- The assessment of needs and issues to be addressed in the care plan are wide ranging, including the young person's emotional and behavioural development, practical and other skills necessary for independent living and the suitability of accommodation. (Figure 1 page 16)
- In relation to care leavers that are involved in the youth justice system; the local authority's leaving care service 'must remain a presence in the young person's life during the period of supervision by the YOT/Probation Service'. (Paragraph 6.46)

¹⁴⁹ Volume 3, page 7

¹⁵⁰ Department for Education, October 2010

4.116 Once she reaches the age of 18, Sandy will become a ‘former relevant child’ when the local authority’s duty to provide accommodation and maintenance to Sandy as a care leaver ends. However, Sandy’s local authority is still required to provide various forms of advice, assistance and guidance to her and will continue to do so until she reaches 21 (and for longer if she decides to pursue further education or training). This includes the continued provision of a personal adviser for Sandy, reviewing and revising her pathway plan regularly and taking reasonable steps to keep in touch with Sandy.

Assessment under the NHS & Community Care Act 1990

4.117 Irrespective of whether Sandy is considered to be eligible to receive services from adult mental health services, she has a range of health, social care and housing needs. She is therefore entitled to a community care assessment under section 47 of the NHS&CC Act 1990 (she is about to become 18 and may be in need ‘community care services’). Under section 47(3) of this Act the local social services authority can request the assistance of health and housing authorities if the person being assessed appears to have health or housing needs. In Sandy’s case she has both.

4.118 Although there is no explicit duty on NHS bodies to carry out an assessment of an individual’s health care needs, given the complexity of Sandy’s case, adult mental health services would need to carry out an assessment to ascertain what those needs are and whether they have a duty to meet those needs. (See the discussion on NHS duties in the case of Sunita above.)

4.119 If Sandy is eligible for care leaving support under the CA 1989, the looked after team should be responsible for co-ordinating the assessment of Sandy’s health, social care and housing needs and the provision of services to meet those needs. This is made clear in the Children Act 1989 Guidance and Regulations, Volume 3: Planning Transition to Adulthood for Care Leavers which states:

‘The responsibilities of local authorities to prepare pathway plans and support care leavers as they make the transition to adulthood apply irrespective of any other services being provided for them, for example, because they are disabled, in custody, or because they are being looked after as they entered the country as an unaccompanied asylum seeking child (UASC).’¹⁵¹

Sandy’s housing needs

4.120 Sandy’s housing situation is of some concern and should be explored with her. It is not clear whether she is homeless, or whether she wishes to have a more settled accommodation. If she is assessed to be a relevant child entitled to care leaving support then the local authority responsible for this will also be responsible for providing her with accommodation and maintenance. The provision of suitable accommodation will be a key element of Sandy’s pathway plan – for which the local authority and Sandy’s personal adviser will have ongoing responsibility.

4.121 If she is not considered to be a ‘relevant child’, Sandy’s housing needs should be considered as part of the community care assessment and a referral made to the local housing authority (see s47(3) of the NHS&CCA 1990). The housing authority would then need to undertake the appropriate assessment and inquiries to ascertain what, if any, duties it has to provide Sandy with accommodation.

4.122 The local housing authority may have a duty to provide accommodation to Sandy. (See ‘Guidance to children’s services authorities and local housing authorities about their duties under Part 3 of the Children Act 1989 and Part 7 of the Housing Act 1996 to secure or provide accommodation for homeless 16 and 17 year old young people’, extracts are provided in Annex 2.)

¹⁵¹ Paragraph 3.3

Annex 1

Services to support the care and treatment of children and young people: An overview of relevant legislation

A. The Children Act 1989

The Children Act 1989 (the CA 1989) is relevant to all those working with children and young people. Its main provisions apply to all individuals aged under 18. Although the Act has been amended since 1989 (most importantly by the Adoption and Children Act 2002, the Children Act 2004, the Children and Adoption Act 2006) and the Children and Young Persons Act 2008) the original framework remains intact.

The CA 1989 defines a child as any person under the age of 18 (see section of the 105(1) CA 1989). As noted in the introduction, this guide uses the terms 'child' or 'children' to cover individuals aged under 16.

The provisions that will be of particular relevance to the transition of young people from children's services to adult services are highlighted below.

Parental responsibility

It will be important to ascertain who has parental responsibility for children and young people aged 16 and 17. The term is defined in section 3(1) of the CA 1989 as 'all the rights, duties powers, responsibilities and authority which by law a parent of a child has in relation to a child and his property'.

Decision making and shared parental responsibility

Where more than one person has parental responsibility for a child or young person, each of them may act alone and without the other in meeting that responsibility (section 2(7) of the CA 1989).

This means that consent to admit or treat the child or young person may be given by one person with parental responsibility. However the MHA Code 36.5 advises:

- It is good practice to involve both parents and others close to the child or young person in the decision-making process where practicable.
- If one person with parental responsibility strongly disagrees with the decision to treat and is likely to take legal proceedings to challenge the decision in court, it might be appropriate to seek authorisation from the court before relying on the consent of another person with parental responsibility.

Local authorities with parental responsibility

Where a local authority has a care order in respect of a child or young person (see below) it shares parental responsibility with the parents or others with parental responsibility for the duration of the care order. The MHA Code (36.8) advises:

- Where a child or young person is looked after by the local authority treatment decisions should be discussed with the parent(s) or others with parental responsibility.
- Those with parental responsibility will need to agree on who will be consulted about decisions relating to the child or young person's care and treatment.
- Local authorities can limit the extent to which those with parental responsibility can exercise their responsibilities (section 33(3)b) of the CA 1989). (This will be relevant if there is a conflict between those with parental responsibility and the local authority.)

Who has parental responsibility?

Usually the parents of the child or young person will have parental responsibility but not always. More than one person may have parental responsibility for the same child at any one time (section 2(5) of the CA 1989). Set out below are examples of those who may have parental responsibilities:

- **Mother:** the child's mother will always have parental responsibility for her child unless the child has been adopted by someone else.
- **Father:** if the child's father and mother were married at the time of the child's birth; or if the father has subsequently acquired parental responsibility, for example, through registration, court order or subsequent marriage to the mother. As from 1st December 2003, a father who is not married to the mother of the child can acquire parental responsibility by being registered as the child's father on the birth certificate (see section 111 Children and Adoption Act 2002).
- **Step parents:** may acquire parental responsibility through a parental responsibility agreement or a court order.
- **Other individuals:** may acquire parental responsibility, for example through a residence order (section 12(2) of the CA 1989) or adoption or by being appointed as the child or young person's guardian (note: this is not the same as a guardian under section 7 MHA 1983).
- **Local Authority:** will acquire parental responsibility under a care order (or interim care order) for the duration of care order (section 33(3) of the CA 1989) and, with restrictions, under an Emergency Protection Order (s44(4)c) of the CA 1989). The local authority does not acquire parental responsibility if the child or young person is voluntarily accommodated by the local authority under section 20 of the CA 1989.

Verifying parental responsibility

Those taking decisions in relation to a child or young person with mental disorder should 'always request copies of any court orders for reference on the child or young person's medical or social service file'. Furthermore, if the parents of the child or young person are separated and the child or young person is living with one of the parents, steps should be taken to ascertain whether there is a residence order and if so, in whose favour.¹⁵²

Provision of services for children and families (Part 3 of the CA 1989)

Part 3 of the CA 1989, 'Local Authority Support for Children and Families', sets out a range of powers and duties to local authorities to provide services, including accommodation, for children and their families. Of particular importance is section 17 which places a general duty on local authorities to safeguard and promote the welfare of children 'in need' in their area and provide services for such children.

Section 17(1) states:

'It shall be the general duty of every local authority...

- a) to safeguard and promote the welfare of children within their area who are in need; and
- b) so far as is consistent with that duty, to promote the upbringing of such children by their families, by providing a range and level of services appropriate to those children's needs.'

These duties apply to all children and young people in need in the area of the local authority.

¹⁵²MHA Code 36.6

Providing Services

The local authority has a duty to respond to children in need in their area in the following ways:

- to provide services to children in need (s17);
- to provide such day care for children in need as appropriate (s18);
- to provide accommodation and maintenance to any child in need (s20 and s23);
- to advise, assist and befriend a child whilst he is being looked after and when he ceases to be looked after by the authority (s24);
- to provide services to minimise the effect of disabilities (Schedule 2, paragraph 6);
- to take steps to prevent neglect or ill-treatment (Schedule 2, paragraph 4);
- to take steps to encourage children not to commit criminal offences (Schedule 2, paragraph 7b)); and
- to provide family centres (Schedule 2, paragraph 9).

Framework for the Assessment of Children in Need and their Families, 1.28

Definition of a child 'in need'

A child is in need, for the purpose of the CA 1989 if:

- s/he is unlikely to achieve, or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision of services for him or her by a local authority; or
- his/her health or development is likely to be significantly impaired or further impaired without the provision for him or her of such services; or
- if s/he is disabled (the definition of 'disabled' in the CA 1989 includes a child or young person who 'suffers from mental disorder of any kind'¹⁵³).

These definitions are likely to cover most children and young people aged 16 or 17 who are covered by this guide. The duties described in section 17 apply to all children in need in the area of the local authority.

Services provided under section 17 of the Children Act 1989

Section 17 of the CA 1989 provides that local authorities have a general duty to:

- Safeguard and promote the welfare of children in their area who are in need and (so far as consistent with that duty) promote the upbringing of such children by their families by providing a range and level of services appropriate to those children's needs.
- Make such provision as they consider appropriate for services to be available with respect to children in need within their area while they are living with their families.

The requirement to assess 'a child in need'¹⁵⁴

Although there is no explicit duty to assess in section 17 it is generally considered that local authority children's social care services are implicitly required to assess 'a child in need', including children who are disabled.¹⁵⁵ This is in the light of comments made by the House of Lords on the scope of section 17. (See the judgments of Lord Hope, Lord Scott and Lord Nicholls in *R(G) v Barnet LBC and others*.¹⁵⁶) Lord Nicholls considered that complying with the general duty on the local authority to 'safeguard and promote the welfare of children within their area who are in need' will involve taking 'reasonable steps to assess, for the purpose of the Act, the needs of any child in its area who appears to be in need'.¹⁵⁷

¹⁵³ Section 17(11). Additional financial systems are in place for disabled children: s17A

¹⁵⁴ See also the discussion in Broach et al, *Disabled Children – A Legal Handbook*, LAG, 2010, paragraphs 3.13 – 3.24

¹⁵⁵ See for example: www.nhs.uk/CarersDirect/guide/assessments/Pages/ChildrenActsassessments.aspx

¹⁵⁶ *R(G) v Barnet LBC* [2003] UKHL 57, [2004] 2 AC 208, (2003) CCLR 500

¹⁵⁷ Lord Nicholls of Birkenhead, paragraph 32.

The Provision of accommodation under section 20 of the Children Act 1989

Section 20(1) requires that:

‘Every local authority shall provide accommodation for any child in need within their area who appears to them to require accommodation as a result of —

- a) there being no person who has parental responsibility for him;
- b) his being lost or having been abandoned; or
- c) the person who has been caring for him being prevented (whether or not permanently, and for whatever reason) from providing him with suitable accommodation or care.’

In addition, even if the criteria in section 20(1) do not apply, section 20(3) requires that:

‘Every local authority shall provide accommodation for any child in need within their area who has reached the age of sixteen and whose welfare the authority consider is likely to be seriously prejudiced if they do not provide him with accommodation.’

Duty to co-operate

Section 27 of the CA 1989 (Co-operation between authorities) provides:

- 1) Where it appears to a local authority that any authority mentioned in sub-section (3) could, by taking any specified action, help in the exercise of any of their functions under this Part, they may request the help of that other authority, specifying the action in question.
- 2) An authority whose help is so requested shall comply with the request if it is compatible with their own statutory or other duties and obligations and does not unduly prejudice the discharge of any of their functions.
- 3) The authorities are –
 - a. any local authority;
 - b. [repealed] ;
 - c. any local housing authority;

- d. any Local Health Board, Special Health Authority, Primary Care Trust National Health Service Trust or NHS Foundation Trust; and
- e. any person authorised the appropriate national authority for the purposes of this section.

B. The Children Act 2004

In addition to section 10 (referred to in Chapter 2) the following provisions are of key importance.

Section 11: Arrangements to safeguard and promote welfare

This section places a duty on a range of organisations, (including local authorities and NHS bodies) to make arrangements to ensure that:

- their functions are discharged having regard to the need to safeguard and promote the welfare of children (and young people aged 16 or 17), and
- the services they contract out to others are provided having regard to that need.

Section 13: Local Safeguarding Children Boards

This section requires each local authority in England to establish a Local Safeguarding Children’s Board (LSCB) for their area. The membership of LSCBs include local authorities, Strategic Health Authorities, Primary Care Trusts, NHS Trusts and NHS Foundation Trusts. The objectives of LSCBs are to coordinate local work to safeguard and promote the welfare of children (and young people aged 17 or 18) and to ensure the effectiveness of that work.

C. The NHS and Community Care Act 1990

The NHS and Community Care Act 1990 requires social services departments to assess the needs of persons who may require community care services and, if appropriate, to provide community care services to meet those needs. (Most of the provisions relate to adults - the exceptions are discussed in Chapter 3). Local authorities must also prepare and publish plans for the provision of community care services (section 46).

Definition of 'community care services'

Section 46(3) defines "community care services" to mean 'services which a local authority may provide or arrange to be provided under any of the following provisions:

- a) Part III of the National Assistance Act 1948
- b) section 45 of the Health Services and Public Health Act 1968
- c) section 254 of, and Schedule 20 to, the National Health Service Act 2006, and section 192 of, and Schedule 15 to, the National Health Service (Wales) Act 2006;
- d) section 117 of the Mental Health Act 1983'

Assessment of needs for community care services

Of key importance is the local social service authority's duty to carry out a 'community care assessment'. This is set out in section 47(1):

'...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.'

Section 47(2) requires that if at any time during the community care assessment it appears to a local authority that the person being assessed is a disabled person, the authority should consider whether the person has any needs under section 2 of the Chronically Sick and Disabled Persons Act 1970 and 'shall inform him that they will be doing so and of his rights under that Act'.

Section 47(3) requires the local authority to inform the relevant health or housing agencies if the person appears to have a health or housing need. It states:

'If at any time during the assessment of the needs of any person under subsection (1)a) above, it appears to a local authority—

- a) that there may be a need for the provision to that person by such Primary Care Trust or Health Authority as may be determined in accordance with regulations of any services under the National Health Service Act 2006, or
- b) that there may be a need for the provision to him of any services which fall within the functions of a local housing authority (within the meaning of the Housing Act 1985) which is not the local authority carrying out the assessment, the local authority shall notify that Primary Care Trust, Health Authority or local housing authority and invite them to assist, to such extent as is reasonable in the circumstances, in the making of the assessment; and, in making their decision as to the provision of the services needed for the person in question, the local authority shall take into account any services which are likely to be made available for him by that Primary Care Trust, Health Authority or local housing authority.'

Services provided under section 2 CSDPA 1970 are also 'community care services' if provided to an adult.

The box below sets out some further information on ordinary residence and when the duty to carry out an assessment even if the person is not at that time ordinarily resident:

The duty to assess and ordinary residence

The duty is not dependent on the person being 'ordinarily resident' in that social services authority. Given that 'local authorities have a power to provide services to people who live outside of their area, the duty to assess is not limited to people who are ordinarily resident in the authority's area.'¹⁵⁸

The meaning of 'ordinary residence'

There is no statutory definition of 'ordinary residence'. Department of Health guidance Ordinary residence: Guidance on the identification of the ordinary residence of people in need of community care services, England London, March 2010, replacing earlier guidance, (LAC(93)7) advises that it should be given its ordinary and natural meaning, subject to interpretation by the courts. It suggests that the determination of a person's place of ordinary residence involves questions of fact such as time, intention and continuity.¹⁵⁹

Individuals about to move to another local authority

Ordinary residence: Guidance on the identification of the ordinary residence of people in need of community care services suggests that a 'pragmatic approach' is taken in relation to people who are planning to move to another local authority area:

'...for example, a person with a job offer who intends to take it up, subject to suitable community care services being available. Such people could be described as "about to be in need" in the local authority's area, even though they may already be in receipt of services in the area which they are leaving. The person's move must be reasonably certain: local authorities would not be obliged to assess a person who was simply considering a move to the area.

Considerations if the person has/or intends to move to another authority

Prioritising Needs advises that when a service user permanently moves from one council area to another (or has a clear intention to move to another council):

'...the council whose area they move into should take account of the support that was previously received and the effect of any substantial changes on the service user when carrying out the assessment and making decisions about what level of support will be provided. If the new council decides to provide a significantly different support package, they should produce clear and written explanations for the service user.'¹⁶⁰

¹⁵⁸ Prioritising need in the context of Putting People First: a whole system approach to eligibility for social care - guidance on eligibility criteria for adult social care, England 2010, paragraph 48

¹⁵⁹ See paragraphs 18 – 37

¹⁶⁰ Paragraph 87

D The Human Rights Act 1998

The HRA 1998 incorporates the rights set out in the European Convention on Human Rights (ECHR) into UK domestic law. This means that if a person considers that their rights have been infringed by a public body (which include NHS agencies and local authorities) they may take legal action before the national courts, whereas before the HRA 1998 came into force they had to pursue a complaint to the European Court of Human Rights (often a lengthy process).

Individuals carrying out statutory functions under the MHA 1983, such as the Responsible Clinician (RC) and Approved Mental Health Professionals (AMHPs) will be considered to be public authorities for the purpose of the HRA 1998. This would include, for example, an RC working in a private hospital exercising their functions under the MHA 1983.

For further information see: www.justice.gov.uk/about/human-rights.htm

E The Equality Act 2010

The Equality Act 2010 ('the EA 2010') covering England, Wales and Scotland, aims to strengthen the law to support progress on equality and to harmonise discrimination law. It has incorporated all previous discrimination legislation (such as the Disability Discrimination Act 1995) into one statute with various key changes to the types of discrimination; various regulations will support the Act. Most of its provisions came into force on 1 October 2010.¹⁶¹ The areas covered include:

- employment,
- education,
- premises and
- membership associations.

Part 3 of the EA 2010, covers the provision of services and the exercise of public functions and will be of particular relevance to the transition of young people from CAMHS to adult services. It is therefore summarised below. The purpose of Part 3 is to ensure that that no one is discriminated against when accessing a public or a private service, regardless of whether or not the service is free.

Provision of services and the exercise of public functions

The EA 2010 protects individuals (including children and young people) from discrimination on the basis of, what are referred to as, 'protected characteristics', for example a person's race or disability. In Part 3 of the Act the protected characteristics are as follows: age¹⁶², disability¹⁶³, gender reassignment, pregnancy and maternity, race, religion and belief, sex (gender) and sexual orientation. These characteristics all have different levels of protection under the Act, depending on how they interact with the various forms of discrimination (see below).

¹⁶¹ Notable relevant exceptions include the new public sector equality duty which is due to come into force in April 2011 and the protected characteristic of age which applies differently depending on the Part of the Act being referred to. In relation to Part 3 of the Act, the provisions relating to age are not expected to come into force until 2012 and will only cover people who are aged 18 or over.

¹⁶² Subject to comments in the above footnote.

¹⁶³ The definition of disability is essentially the same as under the Disability Discrimination Act 1995 as amended ('the DDA'): a person has a disability if they have a physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities, but the list of capacities which under the DDA had to be affected in order for an impairment to affect a person's ability to carry out normal day-to-day activities has not been included in the Equality Act 2010. The Government will be issuing updated guidance on the intricacies of the definition of disability.

While the focus of professionals working with young people with mental health problems may be a young person's disability, it is important to avoid discriminating against them on the basis of another protected characteristic, such as their religion or sexual orientation.

Prohibition of discrimination

Professionals working with children and young people with mental health problems must not discriminate unlawfully against a child or young person because of, or for, reasons related to a relevant protected characteristic, both in the provision of services (such as in-patient facilities) and also when exercising a statutory duty or power, for example an AMHP carrying out a mental health assessment under the MHA 1983.

Discrimination, which can be justified in certain circumstances, comes in various forms:

- direct (including discrimination by association and by perception),
- indirect,
- pregnancy and maternity discrimination, and
- discrimination applying only to disability, namely discrimination arising from disability and a failure to make reasonable adjustments for disabled people.

The Act also prohibits harassment and victimisation.

Public sector equality duty

As from April 2011, listed public bodies (which will include NHS bodies and local authorities) and individuals exercising public functions will be subject to the general public sector equality duty.¹⁶⁴ In addition to race, disability and gender, the duty will also cover age, sexual orientation, religion or belief, pregnancy and maternity and gender reassignment. The general duty requires public bodies to have 'due regard' to the need to:

- eliminate discrimination, harassment and victimisation and any other conduct that is prohibited under this Act;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Certain public bodies will also have to comply with specific public sector duties. The details of these duties are not yet known as the government is still consulting on them.

Positive action

The Act also contains a new provision permitting positive action (as distinct from positive discrimination) to tackle disadvantage, or meet needs or encourage participation by people who share a particular protected characteristic, provided such action meets certain preconditions.¹⁶⁵

For further information see the website of the Equality and Human Rights Commission at www.equalityhumanrights.com, and the website of the Government Equalities Office at www.equalities.gov.uk.

¹⁶⁴ NHS bodies and local authorities are likely to also be subject to the specific duties (the government is currently consulting on these)

¹⁶⁵ The Statutory Code of Practice for Services, Public Functions and Associations was laid before Parliament on 12 October 2010 and is available on the website of the Equality and Human Rights Commission at www.equalityhumanrights.com; non-statutory guidance is also on the website.

Annex 2

Homeless Young People: Local Authority Responsibilities

Guidance was published by the Department of Children Schools and Families and the Communities and Local Government Department in April 2010, 'Provision of Accommodation for 16 and 17 year old young people who may be homeless and/or require accommodation'.¹⁶⁶ Set out below are some key points covered by this guidance.

Referrals from children's services to housing

If during the assessment, children's services consider that the young person has housing needs that could be met by housing authorities they can refer the young person to the relevant housing authority, which will have a duty to assist, whether this be by providing, or arranging, accommodation or by providing advice.¹⁶⁷ In relation to young people who are at risk of being homeless, paragraph 2.10 of the the Accommodation Guidance states:

'If there is reason to believe the young person may be eligible for assistance, may be homeless and may be 16 or 17 years of age, the authority will have an immediate duty to secure interim accommodation (section 188(1) of the 1996 Act) pending a decision whether any substantive duty is owed under Part 7. Such accommodation must be suitable for a 16 & 17 year old and, in considering suitability, authorities should bear in mind that 16 and 17 year olds who are homeless and estranged from their family will be particularly vulnerable and in need of support. The Secretary of State considers that Bed and Breakfast accommodation is unsuitable for 16 and 17 year olds.'

Referrals to children's services

When a 16 or 17 year old seeks help from, or is referred to, local authority children's services and appears to be homeless or at risk of homelessness:

'...children's services must assess whether the young person is a child in need, and determine whether any duty is owed under section 20 of the 1989 Act to provide the young person with accommodation.'¹⁶⁸

Housing authorities are required to refer young people who are homeless to children's services. Paragraph 2.11 of the Accommodation Guidance makes the following points:

- If the young person may be homeless or may be likely to become homeless within 28 days, housing services should make an immediate referral to children's services for an assessment.
- This applies to all 16 and 17 year old applicants without exception, for example including those who are pregnant and/or a parent.
- The question whether any substantive duty is owed under Part 7 of the Housing Act 1996 will depend in part on the outcome of the assessment by children's services, and whether any duty is owed under section 20 of the CA 1989.
- Housing services should continue to secure accommodation under section 188(1) until they have notified the young person whether any substantive duty is owed under Part 7 of the Housing Act 1996.
- Children's services should undertake and complete an initial assessment as soon as possible and no later than the ten days set out in the Framework for the Assessment of Children in Need and their Families. (See paragraphs 2.36 – 2.40).

¹⁶⁶ 'Guidance to children's services authorities and local housing authorities about their duties under Part 3 of the Children Act 1989 and Part 7 of the Housing Act 1996 to secure or provide accommodation for homeless 16 and 17 year old young people', Issued April 2010

¹⁶⁷ See section 27 CA1989. See also the Framework Assessment 5.69-5.72

¹⁶⁸ Paragraph 2.15

- Where children's services have accepted that they have a duty under section 20 of the CA 1989 to provide accommodation and the 16 or 17 year old has accepted the accommodation, the young person will not be homeless and no further duty will be owed under Part 7 of the 1996 Act.

Annex 3

Glossary

Care Programme Approach: A system of care and support for individuals with complex mental health needs which includes an assessment, a care plan, and a care co-ordinator. It is used mainly for adults in England who receive specialist mental healthcare and in some CAMHS services. See also the Common Assessment Framework below. The Department of Health's Refocusing the Care Programme Approach: Policy and Positive Practice Guidance Department of Health, published in March 2008 provides guidance on whether a patient requires the support of the CPA.

Children and Adolescent Mental Health Services (CAMHS): Specialist mental health services for children and adolescents cover all types of provision and intervention – from mental health promotion and primary prevention and specialist community-based services through to very specialist care, as provided by in-patient units for children and young people with mental illness. They are mainly composed of a multi-disciplinary workforce with specialist training in child and adolescent mental health. (See also paragraph 1.15)

Common Assessment Framework (CAF): is a key part of delivering frontline services that are integrated and focused around the needs of children and young people. The CAF is a standardised approach to conducting an assessment of a child's additional needs and deciding how those needs should be met. It can be used by practitioners across children's services in England.

Convention on the Rights of the Child (UNCRC):

The United Nations Convention on the Rights of the Child is an international human rights treaty to which the UK is a signatory, which grants all children and young people under the age of 18 a comprehensive set of rights

Eligible child: is defined in paragraph 19B of Schedule 2 to the 1989 Act, and in regulation 40 of the 2010 Regulations as a 'looked after child' (see below) aged 16 or 17, who has been looked after for a total of at least 13 weeks which began after s/he reached the age of 14, and ends after s/he reaches the age of 16.

Former relevant child: is defined in section 23C of the 1989 Act as a young person aged 18 or over who was either an 'eligible' child (see above) or a 'relevant child' (see below). The local authority has duties in relation to former relevant children until they reach the age of 21, or beyond this age in the case of former relevant children who are pursuing a programme of education or training.

Looked after child: A child is looked after by a local authority if s/he is in their care by reason of a care order or is being provided with accommodation under section 20 of the 1989 Act for more than 24 hours with the agreement of the parents, or of the child if s/he is aged 16 or over (section 22(1) and (2) of the 1989 Act).

Personal budgets (in social care): Personal budgets are local authority money apportioned to individuals to manage their care costs in line with an agreed support plan, following a full community care assessment and financial allocation by the council. An individual can take a personal budget in the following different ways: as a direct (cash) payment, held by the individual, an account held and managed by the council in line with the individual's wishes, or placed with a third party (provider) and called off by the individual in agreement with the provider and as a mixture of the above. (Personal budgets in health care are being piloted - there are currently 64 pilot sites actively involved in the pilot programme, involving around half the PCTs in the country.)

Section 7 Guidance: This refers to guidance that has been issued under section 7 of the Local Authority Social Services 1970. This section requires local authorities in exercising their social services functions to act under the general guidance of the Secretary of State; unless there are exceptional reasons in individual cases authorities are expected to comply with this guidance.

Relevant child: is a young person aged 16 or 17 who was an 'eligible child' (see above) but is no longer looked after, defined in section 23A of the 1989 Act and regulation 4 of the Children (Leaving Care) (England) Regulations 2001

Annex 4

Resources Section and Further Reading

Assessments

Common Assessment Framework: a range of information, including guides for managers and practitioners is available at:

www.cwdcouncil.org.uk/integrated-working/integrated-working-guidance

Refocusing the Care Programme Approach (Department of Health, March 2008):

www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_083647

Framework for the Assessment of Children in Need and their Families (Department of Health, April 2000):

www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4003256

Care planning for looked after children and care leavers

A range of information, including The Children Act 1989 Guidance and Regulations Volume 2 Volume 2: Care Planning, Placement and Case Review (England) Regulations 2010 and statutory guidance, March 2010 and Volume 3 Planning transition to adulthood for care leavers - including guidance on the Care Leavers (England) Regulations 2010 is available at: www.education.gov.uk/childrenandyoungpeople/families/a0065502/care-planning-for-looked-after-children-and-care-leavers

Children and Adolescent Mental Health Services Review

Information about the external review of CAMHS including the Review's interim, final report and the government's response: can be found at:

www.education.gov.uk/publications/standard/publicationDetail/Page1/CAMHS-REPORT

Confidentiality and Sharing Information

Confidentiality: NHS Code of Practice (Department of Health, November 2003):

www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4069253

Information Sharing: Guidance for practitioners and managers, HM Government, 2008. Reprinted 2009. Available at:

www.education.gov.uk/publications//eOrderingDownload/00807-2008BKT-EN-March09.pdf

Continuing Care

The national framework for NHS continuing healthcare and NHS-funded nursing care (Department of Health, July 2009 (revised): www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_103162

The National Framework for Children and Young People's Continuing Care: www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_114784

Human Rights and Equality

General information on human rights is available at: **Ministry of Justice:** <http://www.justice.gov.uk/whatwedo/humanrights.htm>

Equality and Human Rights Commission: www.equalityhumanrights.com/

A range of information on the Equality Act 2010 is available at: www.equalityhumanrights.com/legal-and-policy/equality-act/

Legal References:

Steve Broach, Luke Clements, and Janet Read, Disabled Children: A Legal Handbook, LAG & Council for Disabled Children, 2010 (the full text is also on line – see www.ncb.org.uk/cdc/resources/legal_handbook.aspx)

Luke Clements and Pauline Thompson Community Care and the Law, LAG, 4th Edition 2007

Richard Jones, Mental Health Act Manual, Sweet & Maxwell, 13th Edition 2010

White, Carr and Lowe, The Children Act in Practice, LexisNexis, 4th Edition, 2008

The Legal Aspects of the Care and Treatment of Children and Young People with Mental Disorder: A Guide for Professionals (National Institute for Mental Health, January 2009)

Safeguarding

Working Together to safeguard Children: A guide to interagency working to safeguard and promote the welfare of children, HM Government March 2010 <http://publications.education.gov.uk/eOrderingDownload/00305-2010DOM-EN-v3.pdf>

Safeguarding Disabled Children: Practice Guidance (Department Children, Schools & Families, July 2009), available from the Department of Education: <http://publications.education.gov.uk/default.aspx?PageFunction=productdetails&PageMode=publications&ProductId=DCSF-00374-2009&>

Transition

Sheree Kane, Managing the Transitions From Adolescent Psychiatric, In-patient Care Toolkit National Children's Bureau, 2008 http://www.ncb.org.uk/resources/free_resources/in-patient_care_transitions.aspx

National Framework for Children and Young People's Continuing Care (Department of Health, 25 March 2010): www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_114784

Transition: moving on well A good practice guide for health professionals and their partners on transition planning for young people with complex health needs or a disability (Department of Health, 19 March 2008): www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_083592

Guidelines on the discharge from hospital of children and young people with high support needs (Council for Disabled Children, 2010) available at: www.ncb.org.uk/cdc/Guidelines_on_the_discharge_from_hospital_of_children_and_young_people_with_high_support_needs.pdf

Mental Health Policy

Department of Health No Health without Mental Health; A cross governmental outcomes strategy for people of all ages and accompanying documents including No Health without Mental Health; Delivering better mental health outcomes for people of all ages

www.dh.gov.uk/en/Healthcare/Mentalhealth/MentalHealthStrategy/index.htm

Department of Health and Department of Education and Skills National Service Framework for Children, Young People and Maternity Services, Child and Adolescent Mental Health (CAMHS), 2004:

http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4089114

Department of Health and Department of Education and Skills, Report on the Implementation of Standard 9 of the NSF for Children, Young People and Maternity Services, November 2006:

www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_062778

Refocusing the Care Programme Approach: Policy and Positive Practice Guidance Department of Health, March 2008:

www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_083647

Mental Capacity Act 2005 Code of Practice:

www.publicguardian.gov.uk/mca/code-of-practice.htm

Mental Health Act 1983 (as amended)

Information on the Mental Health Act 1983, including the Code of Practice to the Mental Health Act 1983, can be found at:

www.dh.gov.uk/en/Healthcare/Mentalhealth/InformationontheMentalHealthAct/DH_4001816

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