



## Young Carers Rights Explained - 7 February 2024

'Young carer' was not a term that had previously appeared in any English legislation until April 2015. This was when the Care Act 2014 came into force, along with changes to the Children Act 1989 (through amendments contained in the Children and Families Act 2014). Before this, for a local authority to have an obligation to a young carer (i.e. someone aged under 18 who provides care on an unpaid basis for another person), she or he had to be identified as a 'child in need'. There were also broader existing obligations to consider the needs of carers with no lower age limit (and so apply to carers under 18). However, although there were several references to young carers in previous guidance, the overall effect was convoluted and difficult to understand.

All this changed, when both the Care Act 2014 and the Children and Families Act 2014 addressed the needs of young carers clearly and directly. This short paper aims to explain the background to this and also how the rights of young carers have been further enhanced by the Health and Care Act 2022.

The law concerning young carers was strengthened so that when a child is identified as a young carer, the needs of everyone in the family are to be considered. This can trigger action from both children's and adults' services – assessing why a child is caring, what needs to change and what would help the family to prevent children from taking on this responsibility in the first place.

There is now a comprehensive range of legislation in place requiring response to young carers and their needs. This places obligations on both adult and children's social care; but also now upon Integrated Care Boards and NHS Trusts. Effective implementation and delivery of these responsibilities requires both a whole council and a whole system approach. In order to help facilitate this, a template for a memorandum of understanding between local partners has been produced by (amongst others) by the Associations of Directors of Children's Services and Adult Social Services and is titled "**No Wrong Doors**". These notes about young carers' rights at law have been written to help support a new version that reflects changes, including those arising from the Health and Care Act 2022.

## Amendments to Section 17 of the Children Act

The Children and Families Act 2014 amended the Children Act 1989 by inserting new Sections 17ZA to 17ZC . This introduced new rights to improve how young carers and their families are identified and supported, and to extend the right to an assessment of their support needs to all young carers under the age of 18 regardless of who they care for, what type of care they provide or how often they provide it. The duty on local authorities to undertake these assessments is triggered when they consider that a young carer may have needs - irrespective of whether there has been a request to assess - and this duty applies to both adults and children services. These provisions work alongside measures in the Care Act 2014 to enable a “whole-family approach” to assessment and support, so that young carers and their families can access appropriate assistance.

These clauses came into force on the 1 April 2015 to coincide with the implementation of the Care Act and the provisions include;

- Ensuring the right to an assessment of needs for support will be extended to all young carers under the age of 18 regardless of who they care for, what type of care they provide or how often they provide it;
- Under the Children Act, local authorities MUST assess a young carer where they may have needs for support;
- Placing a clearer duty on local authorities to undertake an assessment of a young carer’s needs for support on request or on the appearance of need;
- Requiring councils to ensure that young carers are identified and that consideration is also given as to whether they are a ‘child in need’ \* ;
- Making links between children’s and adults’ legislation to enable local authorities to align the assessment of a young carer with an assessment of an adult they care for (preventing inappropriate care);
- Requiring councils to be proactive about identifying young carers in their area and acting to help reduce their need for support through the provision of information and preventative measures (for example in schools, through Early Help or young carers support services).
- Note: The definition of “Child in Need” in Section 17 of the Children Act 1989 specifies that a child is “in need” in law if:
- He or she is unlikely to achieve or maintain or to have the opportunity to achieve or maintain a reasonable standard of health or development without provision of services from the LA;
- His or her health or development is likely to be significantly impaired, or further impaired, without the provision of services from the LA;
- He or she has a disability.
- (Development can mean physical, intellectual, emotional, social or behavioural development. Health can be physical or mental health.)

The Westminster Parliament subsequently enacted the **Young Carers Needs Assessments Regulations 2015**. The regulations specify that where a local authority is carrying out a young carer’s needs assessment it must determine:

- The amount, nature and type of care which the young carer provides (or intends to provide);

- the extent to which this care is (or will be) relied upon to maintain the well-being of the person cared for;
- whether the care which the young carer provides (or intends to provide) impacts on the young carer's well-being, education and development;
- whether any of the tasks which the young carer is performing (or intends to perform) when providing care are excessive or inappropriate for the young carer to perform;
- whether any of the young carer's needs for support could be prevented by providing services to the person cared for, or another family member; and what the young carer's needs for support would be likely to be if relieved of part or all of the caring tasks ;
- whether any other assessment of the needs for support of the young carer or the person cared for has been carried out;
- whether the young carer is a child in need;
- actions to be taken following the assessment and arrangements for a future review.

The regulations also state that the “local authority must consider the impact of the needs of the young carer’s family on the well-being of the young carer and any child in that family and, in particular, on their education and personal and emotional development.”

(In the regulations, “well-being” has the same meaning as in Part 1 of the Care Act 2014).

The regulations also require councils to consider whether to combine a Young Carers Needs Assessment with the assessments of other family members (including of adults assessed under the Care Act).

The key Statutory Guidance for the Children Act 1989 “**Working Together to Safeguard Children**” was last amended on 15 December 2023, and for the first time includes a section on support for young carers which essentially reinforces the requirements of the Young Carers Needs Assessments Regulations.

The mandatory statutory guidance also requires that **Early Help** systems must reflect the potential need for support for children who are young carers.

## The Care Act and young carers

As described above, the amendments to Section 17 of the Children Act 1989 work together with provisions in the Care Act 2014, as well as for Children Act assessments. These therefore apply equally to both children’s and adult services. The **Care Act Regulations and Guidance** reinforce this in a number of ways. For example, the Eligibility Regulations for the Care Act require councils to consider the support disabled parents and carers may need in carrying out their parenting responsibilities to care for a child (who may potentially be a young carer).

The Care and support statutory guidance issued under the Care Act 2014 highlights the importance of whole-family approaches, including support for young carers (see Statutory Guidance 6.65 to 6.73).

The Guidance highlights that when carrying out an adult's or carer's assessment, if it appears that a child is involved in providing care the local authority must consider:

- the impact of the person's needs on the young carer's wellbeing, welfare, education and development;
- whether any of the caring responsibilities the young carer is undertaking are inappropriate.

The Guidance stresses that young carers should not be left with inappropriate levels of caring and describes this as "anything which is likely to have an impact on the child's health, wellbeing or education, or which can be considered unsuitable in light of the child's circumstances and may include:

- personal care such as bathing and toileting;
- carrying out strenuous physical tasks such as lifting;
- administering medication;
- maintaining the family budget;
- emotional support to the adult."

The Care Act regulations and guidance also specify that adult services must identify children in the household, consider whether they are young carers and, if so, whether they are children in need.

The Guidance says "a young carer becomes vulnerable when their caring role risks impacting upon their emotional or physical wellbeing or their prospects in education and life. This might include:

- preventing the young carer from accessing education, for example because the adult's needs for care and support result in the young carer's regular absence from school or impacts upon their learning;
- preventing the young carer from building relationships and friendships;
- impacting upon any other aspect of the young carer's wellbeing."

Councils should address the risks of such negative impacts either through support for the adult or through support for the young carer. There will be a need for young carers to either have a young carer's assessment or for the care assessment of the adult they look after to identify support needed to prevent inappropriate care. These will be adult services responsibilities with referrals made to children's services largely only where there are safeguarding issues.

The responsibilities created by the Children and Families Act 2014 and the Care Act 2014 are placed on a local authority as a whole (not just adult or children's services). Together these pieces of legislation are intended to provide a legal framework that will support local authorities to consider the needs of the whole family, deliver coordinated packages of support and protect children and young people from excessive or inappropriate caring roles.

Guidance to the Care Act says councils should ensure that adults' and children's care and support services work together to ensure the assessment is effective – for example by sharing expertise and linking processes. This can be facilitated by joint protocols between adult and children's services to support joint working; utilising the "No Wrong Doors" temple.

## Young carers in transition and young adult carers

The Care Act 2014 (sections 63 – 64) introduced important obligations to young carers 'in transition' to adulthood. The Act requires councils to undertake an assessment for a young carer if it considers that she/ he is likely to have needs for support after becoming 18 and that the assessment would be of significant benefit to him / her. If a local authority decides not to undertake such an assessment it must give reasons for its refusal.

This also provides opportunities to improve the identification of young adult carers (aged 18 to 24); a group whose needs have often been overlooked. There is a developing awareness across the country about the need to better address the needs of this group and these changes to the law should help this happen.

It is good practice for councils to ensure there is clarity locally about who has responsibility for supporting young adult carers aged 18 to 24. This may be the service responsible for the person they support but in some cases support might be via the Early Help system (if caring for a younger sibling) or other preventative services under the Care Act.

## Young Carers, the NHS and Duties to Cooperate

Both the Care Act 2014 and Children Act 1989 include requirements for NHS bodies to cooperate with local authorities, including in relation to their responsibilities to carers and young carers. There are similar provisions in the **NHS Act 2006** where section 72 requires NHS bodies to co-operate with each other and section 82 requires that this also extend to working with local authorities 'in order to secure and advance the health and welfare of the people of England and Wales'. Taken together with the duties to cooperate in the Care Act and Children Act, there can be no doubt that NHS bodies have had a long standing duty to cooperate in relation to carers of all ages.

The Health and Care Act 2022 strengthened the rights of young carers and enhanced these duties for NHS to cooperate with local authorities in the identification, assessment and support carers of all ages. The provisions of the Act that relate to young carers are:

- A duty on Integrated Care Boards to consult carers (including young carers); both around service planning and commissioning
- A duty on Integrated Care Boards to consult carers (including young carers) about individual services relating to the patient for prevention, treatment and diagnosis
- A duty on NHS England to consult carers (including young carers)
- New powers for the Care Quality Commission to assess the performance of local authorities which includes for their duties to carers and ensuring a whole family approach is taken
- A duty on NHS hospital trusts to ensure that unpaid carers of all ages are involved as soon as feasible when plans for the patient's discharge are being made.

- Provision for statutory **Hospital Discharge and Community Support Guidance** which is mandatory and so is more directive than most other NHS guidance
- Clarity that the term carer applies to carers of all ages and therefore includes young carers

To comply with these legal obligations NHS organisations should :

- identify children in the household,
- determine whether they are young carers
- promote provision of information and make referrals for assessment and support
- All of this is particularly relevant when undertaking assessments for ongoing support such as;
  - health personal budgets,
  - NHS Continuing Care,
  - community mental health assessments,
  - wheelchair assessments
  - hospital discharge situations.
  - NHS's social prescribing services.

The statutory guidance for the act **Working in Partnership with People and Communities** indicates that carers (including young carers) should be involved in planning, codesign, decision making, delivery and evaluation at all levels. There is also a duty of transparency.

## The Community Mental Health Framework (formerly Care Programme Approach)

The NHS England position statement (1 March 2022) reaffirmed that the Care Programme Approach (CPA) has been replaced by the national Community Mental Health Framework. One of the 5 core principles for implementing new arrangements is “meaningful engagement with families and carers.” The document also confirms that the new arrangements must be “Care Act compliant”. This means that when introducing new systems to replace the Care Programme Approach, it must not be assumed that carers are willing or able to provide any part of the persons care plan. Carers must be engaged in the assessment process as required by the Care Act and have access carers assessments.

The requirement to be Care Act compliant also means that young carers must be identified and protected from having to undertake inappropriate caring tasks or excessive levels of caring. There is also an obligation to respond to the needs of young carers in transition to adulthood.

Where a young carer appears to need information or support they should be referred to a local young carers service for support or where appropriate referred to children's services for a young carer needs assessment.

## NHS Continuing Care

The 2022 **“National framework for NHS continuing healthcare and NHS-funded nursing care”** paras. 348 - 356 specifies that:

NHS bodies have a responsibility to work in partnership with carers and young carers so that they can be better supported with their caring role. Healthcare professionals should be proactive in identifying carers and be sensitive to the level of support they need and desire.

This approach should be reflected in any checklist and/or full assessment of eligibility for NHS Continuing Healthcare with carers and family members involved where appropriate.

Carers and young carers must be told of their right to carers assessments and young carers needs assessments and referrals for these made as appropriate.

The ICB may need to provide additional support to care for the individual whilst the carer(s) has a break from his or her caring responsibilities.

## NHS Constitution

The NHS Constitution to which every NHS body in England must have regard - (National Health Services Act 2006 section 14P) commits the NHS to ‘work in partnership with patients and carers and to ensure that its services are ‘coordinated around and tailored to, the needs and preferences of patients, their families, and their carers’. The NHS is an all-age service and therefore the term carer applies to carers of all ages and so includes young carers.

The constitution lists seven key principles to ‘guide the NHS in all it does’, of which Principle Four recognises that: “Patients, with their families and carers, where appropriate, will be involved in and consulted on all decisions about their care and treatment”

## Carers and Employment

In 2024, two pieces of legislation will come into force. These will help young adult carers and should also help older young carers in transition to adulthood in thinking about the world of work. These are:

the Carer’s Leave Act 2023 and the Employment Relations (Flexible Working) Act 2023 which allows for flexible working to be requested from day one of employment. Draft regulations for the Carer’s Leave Act will cover employees in England, Wales and Scotland and confirm that Carer’s Leave, is for employees providing unpaid long-term care. Employees taking Carer’s Leave will have the same employment protections as associated with other forms of family related leave. This includes protection from dismissal or detriment as a result of having taken the leave.(this must therefore also apply to carers requesting flexible working).

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