



# Decisions, capacity and EHC plans

## Safeguarding Conference 2016

Caroline Bennett, September 2016

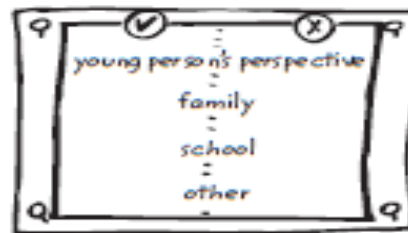
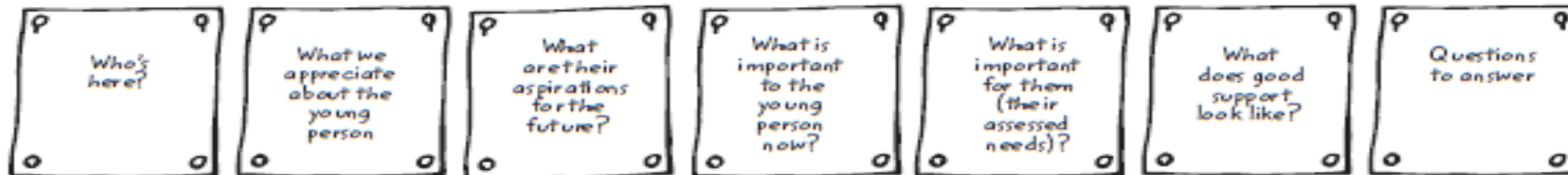




# Preparing for Adulthood Review

<http://www.preparingforadulthood.org.uk/resources/pfa-resources/the-preparing-for-adulthood-review>

## The Preparing for Adulthood Review



What is working and not working from different perspectives?

- About:
- Moving to higher education or employment
  - Independent living
  - Being part of the community and having friends and relationships
  - Being healthy
  - Other areas

| Outcomes | Provision | Targets | Actions |
|----------|-----------|---------|---------|
|          |           |         |         |
|          |           |         |         |
|          |           |         |         |

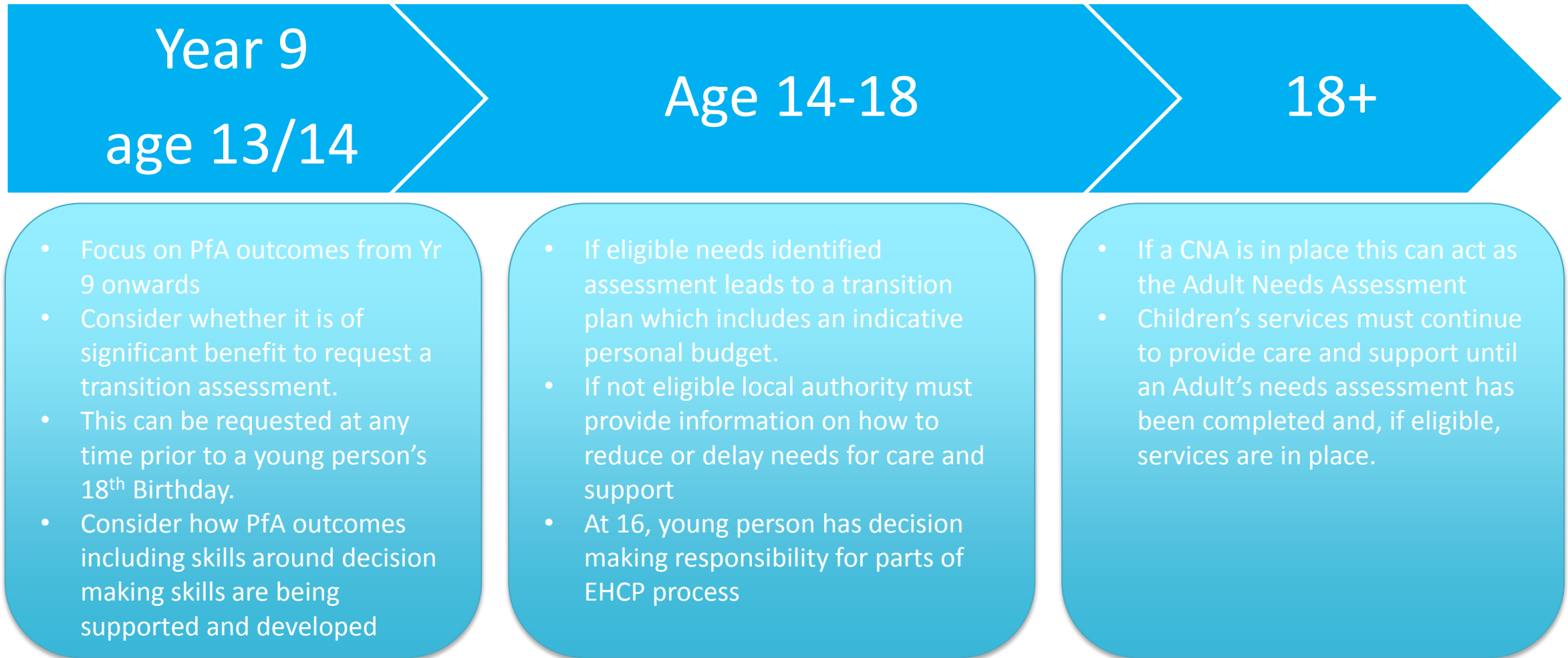


# Care Act 2014

- Transition assessments – Likely need and significant benefit
  - Child's needs assessment
  - Young carer assessment
  - Child's carer assessment
- Child's carer assessment must specifically consider whether the carer:
  - is able to care now and after the child in question turns 18;
  - is willing to care now and will continue to after 18;
  - works or wishes to do so;
  - is or wishes to participate in education, training or recreation.
- Parent Carers Needs Assessment under the Children and Families Act 2014
  - Must have regard to well-being of parent carer and need to safeguard and promote welfare of disabled child



## Example of the timings



# Mental Capacity Act 2005

- Applies to everyone over the age of 16
- It sets out what should happen when people are unable to make one or more decisions for themselves
- It clarifies the roles that different people play in decision-making, including family carers, and establishes a Court of Protection which acts as the ultimate arbiter about mental capacity issues

## What is Mental Capacity?

- The ability to make decisions
- Based on a single decision at a single time



# Children and Families Act 2014: Decision Making

Under Part 3 of the Children and Families Act 2014, the right to make requests and decisions applies directly to disabled young people and those with SEN over compulsory school age (the end of the academic year in which they turn 16) rather than to their parents.

These specific decision making rights, in relation to an EHC plan, are the right to:

- request an assessment for an EHC plan;
- make representations about the content of their EHC plan;
- request that a particular institution is named in their EHC plan;
- request a personal budget for elements of their EHC plan;
- appeal to the first-tier tribunal (SEN and Disability) about decisions concerning their EHC plan;

**The right of young people to make a decision is subject to their capacity to do so as set out in Mental Capacity Act 2005.**



# Choice and decision making?

"The more young people get involved they will learn gradually to make decisions.  
Young people need to be encouraged or it will be scary when they turn 16"

Young person, EPIC

**How are you doing this  
in practice?**

**Examples**

**Challenges**





## Activity – Decision making process

- Consider a decision that you have recently made
- In pairs discuss and note down the process you went through to get to your decision.
  - What information did you receive (when, from where?)
  - What did you do with the information?
  - Did you ask anyone's advice?
  - What were your constraints? (eg. Budget)



# **Mental Capacity Act 2005 - 5 Key Principles**

- 1. It should be assumed that everyone can make their own decisions unless it is proved otherwise**
- 2. Do not treat people as incapable of making a decision unless all practical steps have been tried to help them**
- 3. A person should not be treated as lacking capacity just because they make an unwise decision**
- 4. Actions or decision carried out on behalf of someone who lacks capacity must be in their best interests**
- 5. Actions or decisions carried out on behalf of someone who lacks capacity should limit their rights to freedom of action as little as possible.**





# Melody



## Activity - Melody

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Considering the principles of the Mental Capacity Act 2005:

- Should Melody be able to attend the party?
- How could you work with Dad and Melody to support that to happen?





# Finlay



## Activity - Finlay

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Considering the principles of the Mental Capacity Act 2005:

- What should have been done differently in this situation?
- Do you think that Finlay has the capacity to choose what he wants to study?



# Warren's Forum



# Assessing Capacity

There is a two-stage test of capacity in order to assess whether an individual has the capacity to make a particular decision. This involves asking:

1. Is there an impairment of, or disturbance in the functioning of a person's mind or brain (such as a learning disability or a mental health problem)?
2. If so, is the impairment or disturbance sufficient that the person lacks the capacity to make a particular decision?

If the first stage of the test of capacity is met, the second test requires the individual assessing capacity to show that the impairment or disturbance of the brain or mind prevents the young person from being able to make the decision in question at that time. This is a functional test focusing on how the decision is made, rather than the outcome or the consequence of the decision.



# Assessing Capacity

When considering the decision-making process it's important to consider whether the young person is able to:

- understand the information relevant to the decision,
- retain that information,
- weigh that information as a part of the process of making a decision, and
- communicate his/her decision (whether by talking, using sign language or any other means).





# Best Interests Decisions

- If someone is assessed as being unable to make a decision themselves, another person may make the decision or act in their 'best interests'.
- The person who must lead the 'best interests' process is the person who requires the decision to be made; for example a doctor who requires consent before carrying out treatment.
- As far as possible the young person must be involved in the process, and those with an interest in the young person's welfare should be consulted, so that all the factors relevant to the decision can be weighed up, including the known wishes and feelings of the young person, and any beliefs or values they have that might influence the decision.
- The decision-maker should be clear about their decision and the reasons for arriving at it, and in the case of more serious decisions the process should be recorded in writing.



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**Parent carers and professionals must always support a young person to be involved as much as possible in a decision made on their behalf, even if they do not have the capacity to make it themselves.**

For more information you can visit the CDC resource hub on our website:

<http://councilfordisabledchildren.org.uk/resources-and-help>





# Resources

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## **Disabled Children: A Legal Handbook (2<sup>nd</sup> edition)**

<http://www.councilfordisabledchildren.org.uk/resources/disabled-children-a-legal-handbook-2nd-edition>

## **NICE guidance: Transition from Children's to Adults' services**

<https://www.nice.org.uk/guidance/ng43>

## **Transition Information Network –**

[www.transitioninfonetwork.org.uk](http://www.transitioninfonetwork.org.uk)

## **Council for Disabled Children -**

[www.councilfordisabledchildren.org.uk](http://www.councilfordisabledchildren.org.uk)

## **Preparing for Adulthood programme**

[www.preparingforadulthood.org.uk](http://www.preparingforadulthood.org.uk)

