



# Clan Childlaw Care Leaver's Law Service

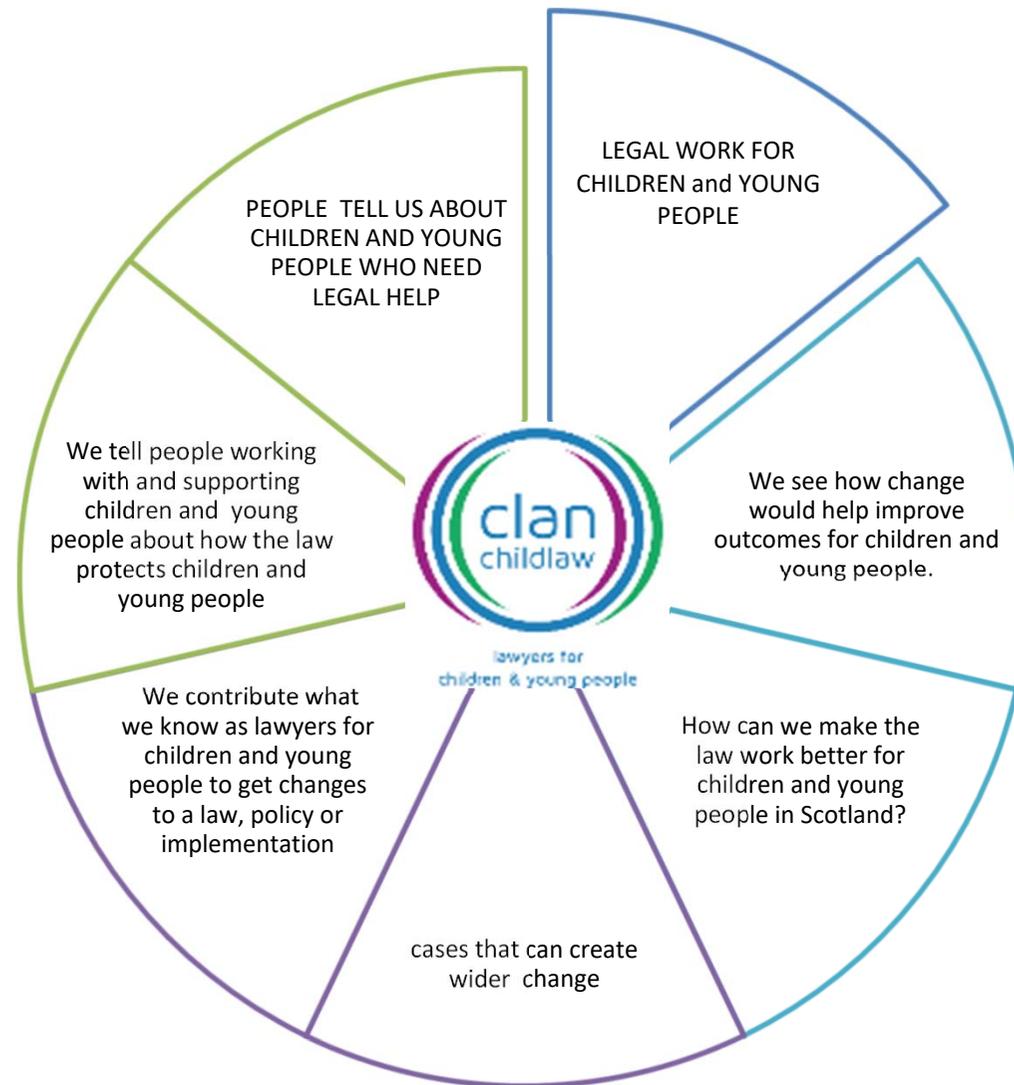
**USING THE LAW  
TO REALISE  
CARE LEAVERS' RIGHTS**



# POLICY WORK

- Through our client work we come to understand how the law is impacting children's lives
- We use that knowledge to work to change the law where we think that is needed to ensure children's rights are protected.
- We publicise the results of cases with a broader impact
- Children's Rights Strategic Litigation Group
- Child Law Network
- Policy, influencing and strategic litigation – sibling rights – judicial review at Supreme Court
- Policy, influencing and strategic litigation - minimising the impact of childhood offending later in life – intervention in Supreme Court case on disclosure of criminal records

# CHILD-CENTERED MODEL



# Policy : Staying Put

- developed in response to concerns about consistently poor outcomes for care leavers
- looked after young people are encouraged, enabled and empowered to remain in positive care settings until they are ready to move on
- avoid accelerated, abrupt transitions from care settings for looked after young people
- Importance of:
  - end of care planning
  - meeting the needs of the individual (rather than age based 'cut off points')
  - relationship-based practice
  - appropriate sustainable accommodation



# The Law

- The Children Scotland Act 1995 as amended by The Children and Young People (Scotland) Act 2014 Part 10 and 11
- The Support and Assistance for Young People Leaving Care (Scotland) Regulations 2003 as amended by The Support and Assistance of Young People Leaving Care (Scotland) Amendment Regulations 2015
- The Continuing Care (Scotland) Order 2015/158
- The Aftercare (Eligible Needs) (Scotland) Order 2015.



# The Right to Continuing Care

care leavers have a right to the same accommodation and support they received while they were looked after, continuing until they are 21.



# The Right to End of Care Planning

Care Leavers have a right to

- have their views taken into account
- a full welfare assessment of continuing in their placement
- in advance of them leaving care.
- a written decision about their placement



# The Right to Aftercare

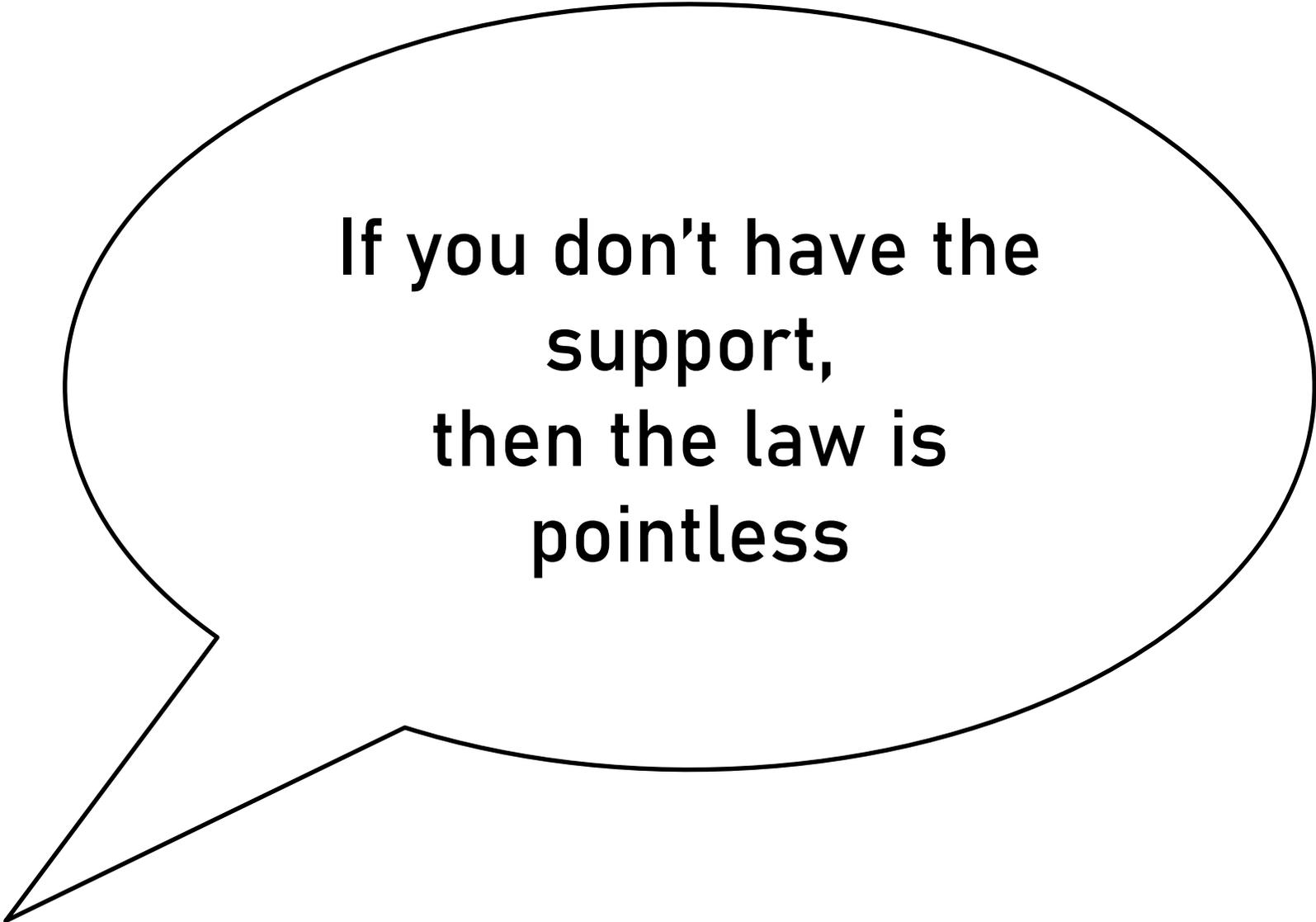


Care Leavers have a right to

- assessment of their eligible needs
  - A plan for 'advice, guidance and assistance'
    - including financial support and secure accommodation-
- to meet their eligible needs
- a written decision about their eligible needs
  - appeal if they disagree with the assessment



**BUT**

A black outline of a speech bubble with a tail pointing towards the bottom-left. The text inside is centered and reads: 

**If you don't have the  
support,  
then the law is  
pointless**



**ACHIEVING A CHANGE IN  
THE LAW  
IS NOT ENOUGH  
FOR YOUNG PEOPLE TO SEE  
A CHANGE IN THEIR LIVES**

I don't know how to ask  
for what I am entitled  
to

I don't feel like I can  
safely challenge  
decisions

I don't understand  
how having these  
rights makes any  
difference to where I  
stay and what  
support I get



**WE HAVE TO  
ACTIVELY ENABLE  
YOUNG PEOPLE TO  
USE THEIR STATUTORY  
RIGHTS**

# Staying Put Guidance

“ Local authorities and their partners – as corporate parents – will want to ensure that looked after young people are not only aware of their right to remain in their placement, **but that they have opportunity to exercise that right.**”



# CARE LEAVERS' LAW SERVICE

- Free legal help for young people leaving care
- Training, information and guidance for people who support young people leaving care



## PROBLEMS WITH IMPLEMENTATION IN CONTINUING CARE

- CSOs terminated before 16
- Unplanned move to lower support before leaving care
- No Welfare Assessment
- “threat of homelessness” – failure to provide an alternative placement
- placing conditions on continuing care
- Young people with disabilities not being considered for continuing care
- Out of area/high support placements terminated
- Placements terminated because young person goes into education
- Reduction in support – financial or ‘in kind’ support like respite and educational placements makes it impossible for the carer to continue with placement

## PROBLEMS WITH IMPLEMENTATION IN AFTER CARE

- terminating continuing care placements
- Young people 'leaving [continuing care] of their own volition' – impact on planning and review
- Failure to recognise that care leavers put into homeless accommodation or supported accommodation are homeless
- 'supported lodgings' - what legal rights do care leavers here have?
- suitable permanent accommodation and need for tenancy support and support services
- Requiring young people to initiate and engage to get support or drop in services



# How do we empower young people to get better outcomes ?

- **Informed advocacy** – helping the young person to assert their legal rights in the process of leaving care
- **Supported advocacy** – calling us to talk through what a young person is entitled to and what they can expect in the process
- **Training** – so those who support young people know how to protect and assert their rights and can help them to assert them.



# How do we use the law to get better outcomes for young people?

**GATEKEEPING** – knowing you can challenge failure to make a decision.

Where a young person is not provided with a copy of their Welfare Assessment. They don't know if a decision has been made, who made the decision, what the reasons were or when the decision was made.

The young person cannot challenge any decision the local authority have made. The local authority can avoid accountability.



# How do we use the law to get better outcomes for young people?

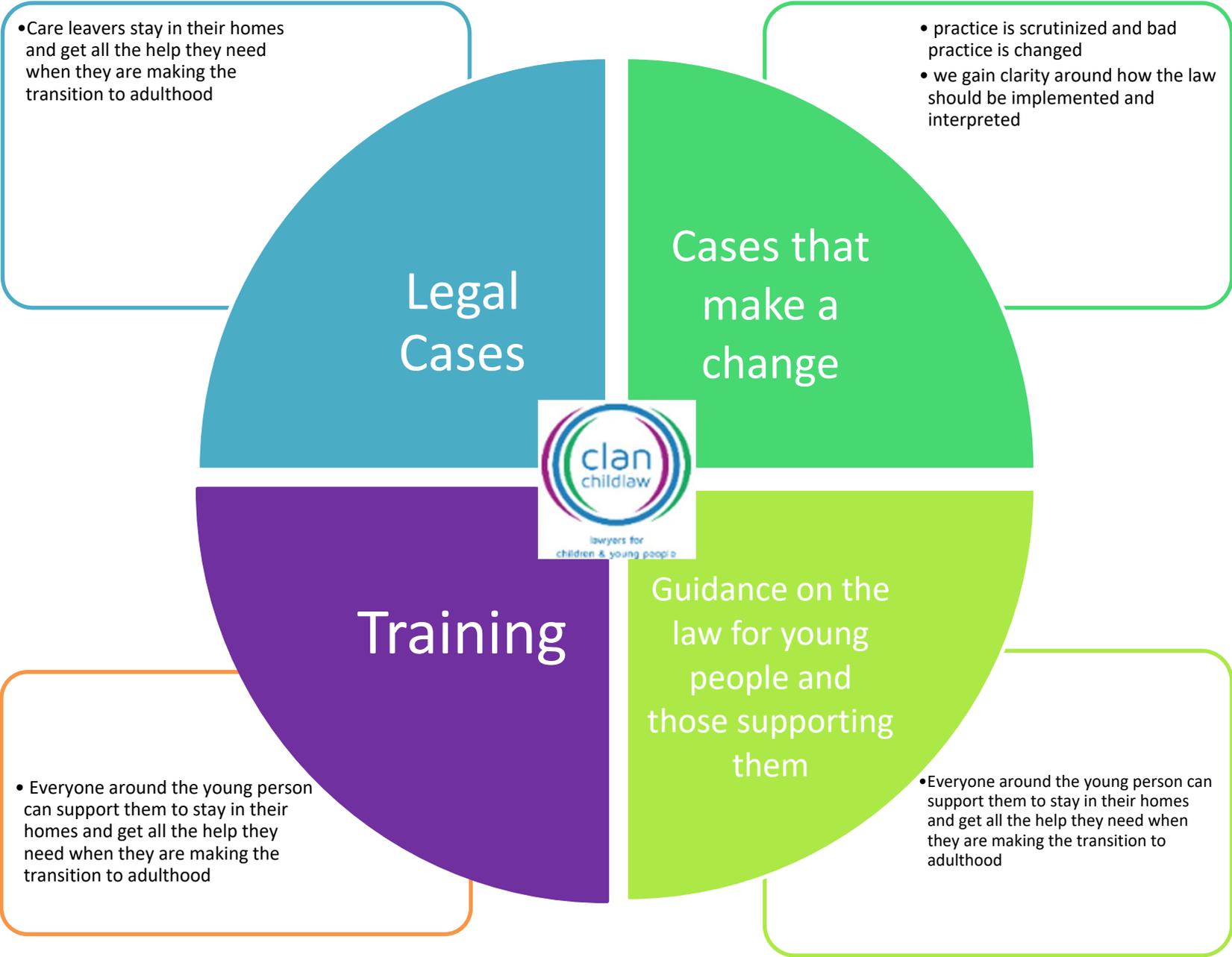
- **Appeal** – making sure that the formal written appeal process get the outcome they need and holds decision makers to account.
- **Lawyer's letter** – sets out the young person's legal rights and the council's legal duties. Requests that the council meet their duty to the young person or reconsider a decision that fails to follow the correct legal process. Suggests that the young person can take legal action against the council if they don't reconsider their decision.



# How do we use the law to also make a wider change?

- **Children's Hearing** – considering whether to terminate a CSO
- **Court** – in some cases where the council have gone about making their decision in the wrong way we can request a **Judicial Review** of the council's decision.
- **Complaint** – and the **SPSO** in some cases where the council have gone about making their decision in the wrong way we can request that their approach and processes are scrutinised
- The **Care Inspectorate** – where the local authority are the providers of the placement or support service...
- Increased effectiveness if the law is used in making the complaint







## PROFESSIONAL

- It won't cost you anything
- Your lawyer knows all about the law that affects children and young people
- They are experienced in working with children and young people
- Your lawyer does not share anything about you without your permission
- Your lawyer shares everything about your case with you

## ACCESSIBLE

- your lawyer meets you at a time that works for you
- Your lawyer will come and meet you somewhere you choose, where you feel comfortable
- Your lawyer can text or call you if you want
- No long letters
- your support or advocacy worker or a carer can arrange meetings if it makes it easier for you

## INFORMAL

- Your lawyer will wear normal clothes (but wear a suit when it's important!)
- Your lawyer will not use jargon or formal language
- Your lawyer give you independent advice. They only works for you, you decide what you want to do and tell them what to say.

## FACE TO FACE

- Your lawyer will meet you face to face whenever there is something you need to talk through,
- Your lawyer will take as much time as you need to talk things through
- They will explain everything to you, answer all your questions and check you understand

# Impact of childhood offending behaviour later in life

- R v Secretary of State for the Home Department [2019] UKSC 3 - Written Intervention (Supreme Court) cases involving the disclosure systems in England and Wales and Northern Ireland - setting out the system of disclosure of childhood offending in Scotland > judgement that youth reprimands and warnings/cautions should not be disclosed in criminal record checks
- AB v HMA [2017] UKSC 25 - Written and Oral intervention (Supreme Court) > decision that the Sexual Offences (Scotland) Act 2009 incompatible with ECHR and outside the legislative competence of the Scottish Parliament and therefore not law.
- Responded to Public Consultation on the Protection of Vulnerable Groups and the Disclosure of Criminal Information
- Submitted evidence on the Age of Criminal Responsibility (Scotland) Bill to Scottish Parliament Equalities and Human Rights Committee
- Gave evidence to the Scottish Parliament Education and Skills Committee on Disclosure (Scotland) Bill (October 2019)



# Sibling rights

- Minister for Children and Young People has announced plans to make improvements to the law for brothers and sisters who are in the care system.
- Law is to be strengthened to keep brothers and sisters together when they are placed in local authority care where it is in their interests to do so and promote contact between them when they are separated.
- Proposed duty in Children (Scotland) Bill on local authorities to take steps to promote contact between brothers and sisters when a child is in care (in same way as it currently case for parental contact).
- Judicial review on sibling rights in the Children's Hearing System - Clan's client 'ABC' challenging decision of Principal Reporter – UK Supreme Court hearing in November 2019.

