

**Official Consultation Response
for the Public Consultation on the
Planning Transition to Adulthood
for Looked After Children
guidance and the Children
(Leaving Care) (England)
(Amendment) Regulations 2010**

Official Consultation Response for the Public Consultation on the *Planning Transition to Adulthood for Looked After Children guidance and the Children (Leaving Care) (England) (Amendment) Regulations 2010*

Introduction:

The Children (Leaving Care) (England) (Amendment) Regulations 2010 (now consolidated as the Care Leavers (England) Regulations 2010) provides the legal framework for care leavers who are “relevant” or “former relevant” i.e. who are no longer formally looked after. The *Planning Transition to Adulthood for Care Leavers Statutory Guidance* explains how the regulations should be put in to practice, offering advice to local authorities on how to carry out their duties so that young people leaving care are able to reach their potential as they make the transition to adulthood.

The majority of respondents wanted increased detail and more examples of good practice in the guidance; however, this approach was not shared by respondents with managerial responsibilities. In response to managers’ concerns about the guidance being too prescriptive, good practice examples were removed from the final text, sharpening the guidance’s focus on information about meeting regulatory requirements. However, since respondents had valued the descriptions of good practice this information was consolidated as non statutory annexes to the final version. These revisions significantly reduced the length of the statutory guidance whilst retaining information the field found useful.

The consultation was held between 4th Jan and 26th March 2010. This document summarises the key issues raised during the consultation period. The consultation consisted of the following:

- 1) three stakeholders events
- 2) an online consultation exercise hosted by Digital Public on behalf of the Department
- 3) Feedback from National Forums.

Responses:

There were 70 responses (not including confidential responses) submitted through the consultation website, with over 30 further responses received following the consultation events. Respondents were from a range of organisations and included both local authorities and a range of third sector organisations. A full list of respondents (excluding those marked as private) is provided in Annex A.

Next Steps:

The revised regulations and guidance are due to be published in autumn 2010 and come into effect in April 2011. They have been amended in response to consultation feedback. Changes made include:

- Information on education has been consolidated into one chapter with details about good practice for supporting care leavers in further education being annexed to the guidance.
- Factors for assessing suitability of accommodation have been clarified so that the judgement as to what is suitable will be based on the application of professional judgement to individual cases and the assessment of suitable accommodation does not become simply a matter of applying a checklist - an approach that might restrict accommodation options for young people.
- The allocation of PA support to care leavers who resume education or training up to age 25. The allocation of this PA support should be based on policies decided by each local authority.
- Local authorities should develop policies about how they propose to support young people who take up their entitlement to PA support.
- Information that is available elsewhere or that is not directly related to the Regulations has been omitted from the revised draft.

The Consultation Process:

The online exercise conducted by Digital Public was an experiment for the then Department for Children Schools and Families. The consultation site was designed to reach a broader audience and to attract young people to be involved in the consultation. The experimental nature of the site did lead to some technical and data issues.

Taken as a whole, the issues and comments raised both online and at the events showed the response to the guidance and its aims was positive; however some significant issues were identified that respondents felt should be addressed. The issues identified fall into three major categories:

- structural change requested
- clarification needed
- insufficient information or detail provided.

Structural Changes:

Structural adjustments to the guidance were requested in relation to education and health. Respondents suggested education should have its own chapter

to consolidate the information on the issue; a smaller number (2 respondents) suggested health issues be addressed in their own chapter.

The main issue identified by respondents with regard to health (11 event and 6 online responses) was that the guidance gave insufficient emphasis to the emotional well being and mental health of young people.

Given the range of consultation responses suggesting more coverage about health promotion for care leavers, the Guidance has been amended to include an Annex outlining good practice in promoting care leavers' health and wellbeing.

Pathway Planning:

The most significant issue raised was the relationship between the pathway plan and the care plan.

Respondents requested clarity on whether the pathway plan replaces the care plan post 16, or whether both are maintained, and on the legal requirements of a pathway plan's contents for different care leaver groups. Respondents also suggested that young people should be consulted on who should be involved in drawing up and assessing the plan.

Education:

The most significant areas raised by respondents were:

- Clarity on what support a local authority is expected to provide to care leavers returning to education post-21 (3 online and 13 event respondents). Also raised for this group were the content and format of their pathway plan and the financial implications to authorities of supporting them.
- A perceived bias towards higher education and related financial support and a lack of coverage of further education in the guidance (4 online and 5 event responses). For example, one issue raised was that care leavers enrolled in further education often have to rely on job seekers allowance once they turn 20, whilst those at university do not. However, as welfare benefits policy is not the responsibility of the Department for Education this is not an issue that can be resolved through this guidance.
- Concern about the local authority role in determining whether a course of education or training is suitable.
- Clarification on the relationship between the HE bursary and other financial support available to those undertaking higher education. Respondents requested the HE Bursary Regulations be added to the guidance as an appendix for information.

Respondents (8 event and 4 online responses) expressed concern that linking the provision of a Personal Advisor to education would not focus support on those who might most need it, i.e. those with least achievement, most challenges and not in education, training or employment.

As participation in further education and training is a very important route to skills and employment for care leavers, the guidance has been amended to include additional material on further education and to clarify that entitlement to a PA up to age 25 could include support for those involved in a wide range of educational activity, including basic skills training and employer based apprenticeships.

Reviews:

Respondents raised the following concerns:

- The need to ensure sufficient flexibility in the review timescale requirements to meet the needs of individual cases.
- The list of triggers should be amended to include significant additional triggers.

The timescales set out in the guidance for pathway plan reviews were considered suitable by 7 online respondents. However, respondents were concerned that there needed to be the flexibility to visit more frequently in complex cases where needed – though the guidance does not prescribe a maximum visiting frequency.

Four event responses noted that reviewing a pathway plan at 28 days may not be sufficient for those with complex and challenging needs ; however these regulations would not prevent reviews being held earlier if necessary. The guidance has also been amended to explain that holding a review should not be a substitute for appropriate discussion between professionals about how best to respond to the needs of vulnerable young people.

One response suggested that there should be a requirement to visit within seven days where a move is unplanned. It was also felt that the requirements applying to those young people who refuse services needed to be clarified. The Children's Rights Director noted that young people indicate consistently that they should be visited at least once a month.

There was general support for the list of triggers for reviews with 9 online responses indicating the list of triggers was helpful. However, respondents felt that there should be additional triggers; 4 responses stated that the list of triggers was helpful but should not be considered exhaustive. Respondents made the following suggestions for addition to the list of triggers:

- the young person themselves requesting a review (6 event and 4 online responses). This amendment has been added to the Guidance;

- a health trigger that included mental health (3 online responses);
- changes in or risks to education, for example the young person being at risk of losing their educational place due to exam failure (5 online responses);
- where a young person is unhappy with their accommodation.

Respondents suggested that a young person's request for review should be the first listed trigger, to stress the significance of this.

Responses also suggested altering the trigger around child protection concerns in relation to the children of care leavers, to initiate a review when concerns about parenting are first raised rather than waiting until an official safeguarding referral is made.

Personal Advisers:

The Personal Adviser (PA) is a key element of the support offered to care leavers and, as such, attracted a significant amount of comment. The main issues raised were:

- A formal training and assessment structure for PAs (4 online and 4 event respondents)
- The role of the PA post-21 yrs
- The role of the PA with disabled care leavers
- Clarification on whether a care leaver's social worker can also act as their PA.

Respondents felt that the qualifications and formal training that PAs required was not clearly defined. In response to this, an annex outlining the necessary skills for PAs was developed and annexed to the Guidance.

The role of PAs post-21 was also a significant issue raised in responses. Thirteen event respondents requested increased clarity on the expectations of the extension of the provision of a PA up to age 25 for those in education. Specifically, clarification was requested about whether the PA support offered was the same for those over-21 as for those under-21. Also, the provision expected to be provided to those who *return* to education post-21 was felt to need clarification, particularly for those starting a long education course.

The issue of delegating some of the PA role to carers was also raised. Respondents questioned whether the delegation of some PA functions to foster carers blurs the role of primary carers and whether this might make it difficult to progress a pathway plan.

Clarification was requested (13 event respondents) on whether the social worker can also act as a PA; better reference to case law was requested and respondents wanted clarification on what age the handover of leading the case should take place.

Care Leavers 18-25:

Most respondents felt that the duties of local authorities for care leavers aged 18-25 were clear. However there were issues that respondents felt needed addressing:

- Clarification of the requirements on local authorities: Respondents wanted to avoid what they saw as the current “postcode lottery” (3 online responses);
- Local authorities need to consider the needs of care leavers in their strategic planning and priorities setting more broadly, and not only in children’s services. (3 online and 1 event response).

The sense of “postcode” lottery was echoed in relation to the “setting up home” allowance; significant variation was unpopular with young people and many called for a national minimum to be set.

Respondents felt that the entitlements of the different statuses of care leavers needed to be made clearer; in particular respondents (1 online and 3 event) indicated that the entitlements of those who leave care to return to their family needed to be clarified. Respondents indicated that local authorities should set out and make publicly available their policy on what support is ordinarily available for this group.

In relation to strategic planning, 2 of the 3 online responses on this issue specifically referred to the need to include Housing Services. One third sector respondent commented that:

“It will also be essential that the needs of children in and from care are highlighted and included in all strategic planning. It is welcome that there is a greater focus on involvement in housing and homelessness strategies; however, the same focus is required in planning for other provision including health, youth services, education etc.”

This is in conjunction with the 10 event responses that saw a need to strengthen the guidance’s references to corporate parenting and the 4 responses identifying the need to strengthen references to children’s trusts and strategic partnerships (see section on Inter Agency Working).

There was also a range of smaller scale issues raised by respondents, including that local authorities should be made to ensure that all care leavers have appropriate identification documents (birth documentation, passport etc); and that local authorities needed to work to promote a more positive image of care leavers.

Groups Requiring Specialist Support:

Respondents suggested that certain groups should be covered in the chapter on specialist support:

- Young parents, and particular concern around provision for childcare (at least 5 online comments)
- Young people with complex needs who do not meet the thresholds of adult services
- Out of authority young people – clarification on their status and local authority obligations for future support
- Young people returning to birth families – clarification on their status and local authority obligations for future support
- Young people with mental health problems.

In addition to the groups suggested above, the National Benchmarking Forum response argued that those not in suitable accommodation should also be treated as vulnerable group.

Clarification was requested on where certain responsibilities lay in cases being transferred between children and adult services. Respondents also wanted clarified whether a separate personal advisor needed to be appointed or if the role could be performed by the lead professional in adult services. Respondents sought clarification on whether the adult care plan also becomes the pathway plan. Respondents also requested further clarification on whether adult service contact with disabled care leavers was sufficient or if children's services needed to maintain contact as well.

Respondents requested clarification on certain financial support for disabled care leavers. Two online responses requested clarification regarding the financial responsibilities of host and responsible authorities where disabled children are placed out of authority. There were also concerns about the setting up home allowance in relation to disabled care leavers and the relationship with the independent living allowance. The guidance cannot be prescriptive, however, about how local authorities should implement the setting up home allowance for care leavers for whom they are responsible, since this is a matter for local authorities to determine. Emergency provision and the setting up home allowance are covered more fully in the section on money and benefits.

Few respondents raised specific issues regarding unaccompanied asylum seeking children (UASC). Two online respondents felt that provision for the mental health needs of UASC needed to be better covered in the guidance. Four event respondents highlighted what they saw as conflict between the Care Leavers regulations and immigration legislation. The Refugee Council offered a detailed response in this area and their comments were considered carefully and appropriate amendments made to the revised guidance as a result.

In relation to care leavers in custody, respondents indicated that there can be difficulties in arranging visits to some institutions.

Care Leavers Living Away From Their Responsible Authority:

A number of issues were raised in relation to care leavers placed out of authority. Five event respondents indicated that those placed out of authority were “missing” from the guidance and that there was a lack of focus on this group. One respondent indicated that the responsibilities of host and responsible authorities needed to be extremely clear in the guidance. Online responses felt that there needed to be much better notification to “host” authorities of those out of authority care leavers in their area. The most significant issue raised was emergency planning and financial provision for those out of authority. The response to emergency provision and strengthening inter-authority protocols for out of authority care leavers is covered under the inter-agency working section of this response.

Accommodation:

The majority of respondents felt that the material provided regarding the assessment of accommodation was clear (14 online responses). Despite this, concerns were raised in relation to:

- Assessing the suitability of accommodation
- Dispute resolution where the young person disagrees with the assessment of suitability given by the PA or social worker (7 online responses)
- “Safeguarding Assessments” – needed to be clarified, both for shared accommodation and for supported lodgings
- “Staying Put” – Increased clarification and information on the conversion of foster placements to supported lodgings (9 event respondents); including financial implications of staying put placements with independent fostering agencies (2 online and 4 events responses). Additional information needed on “staying put” in children’s homes, due to age limitations (2 online and 5 event responses).
- Eviction – avoidance of and guidance on (1 online and 9 event responses).

In response to the above concerns, Schedule 6 has been amended to include affordability in assessing suitability of accommodation and further clarification had been provided on “staying put”. Regarding eviction, there is information on the importance of responsible authorities working with young people and housing agencies to prevent eviction in the guidance and the revision of the guidance does not include any additional information on what should already be good practice.

In addition to the concerns listed above, respondents also raised other concerns. Respondents stressed the need to work to prevent care leavers being classed as intentionally homeless (3 online and 1 event response). Another issue felt to be insufficiently addressed in the guidance was those who are difficult to house due to criminal convictions or history of arson.

Money and Benefits:

Respondents (7 online) felt that the information contained in the guidance was sufficiently clear to allow local authorities to develop sound financial policies with the correct priorities. Eight event respondents stated there needed to be examples of good financial policies and that the guidance needed to show which areas to prioritise.

Response on benefits focused primarily on:

- Housing benefit (4 online and 1 event response) – the loss of “shared room” allowance for care leavers post 21 years of age, as it can render previously affordable suitable accommodation unaffordable. However, this policy is not governed by the Dept’ For Education and is not a matter for this guidance.
- Care leavers being able to apply for benefits prior to age 18 (5 event responses). Provision exists currently to allow care leavers to apply for benefits prior to their turning 18; leaving care services can already make arrangements with Job Centre Plus that allow young people leaving care to apply for benefits up to two weeks before they turn 18, meaning they will have access to payments earlier.
- Setting up home allowance and the variation in the allowance amount between local authorities. Thirteen event and 4 online consultation responses called for the establishment of a national minimum for the allowance. However, it is the responsibility of local authorities to determine the level of their “setting up home” allowance.

Specific concerns over the setting up home allowance included the cost of contents insurance and a TV license. One online response noted that the cost of insurance, a TV license and utility checks “*could run to half the setting up home allowance budget*”. The creation of a national agreement on insurance for care leavers was suggested. One event response also questioned whether care leavers could get a free TV license, as the over 75’s do. One online response suggested annual review of the allowance and 2 responses suggested linking the setting up home allowance with the cost of living index.

Inter-agency working:

The main points raised were:

- Strengthening corporate parenting and inter-agency responsibility, especially with housing services (10 event and 8 online responses).
- The need to ensure effective relationships between Dept for Work and Pensions (DWP) (5 online responses), Job Centre Plus and Care Leavers Teams/Children's Services; in particular focusing on corporate parenting responsibility and being able to apply for benefits pre-18; and DWP "penalising" with reduced benefits when the local authority provides assistance.
- The need to ensure effective inter-authority cooperation when care leavers are placed out of authority (emergency planning and notification).

Twenty-seven event responses specifically noted issues on emergency financial provision for those placed out of authority. Those measures that drew the most response were:

- ensure that emergency financial plans are pre-arranged on a case by case basis (e.g. as part of pathway planning requirement) (6 online responses)
- strengthen and stress the existing national inter-authority protocol (19 responses)
- ensure that all young people have a bank account so that if necessary funds can be paid to them directly (5 responses).

Language and Terminology:

Helpful comments were made on some of the language and terminology. The main issues raised by respondents were:

- Use of "must" versus "might", "should" or "shall" needing to be made more consistent and clarified to ensure clear distinction between statutory requirements and good practice (6 event and 4 online responses). The guidance has been revised to clarify this.
- Use of unhelpful / insensitive terms (e.g. "excluded licensee", "special needs" and "bottom drawer"). As most of the terms raised as of concern by respondents are based in legislation, changing them is not achievable in this guidance.
- Incorrect acronym used for the Fair Access to Care Services Guidance. In response, the term has been changed in the guidance.

Managers Views:

Although the nature of the information collected on respondents makes it difficult to assess the difference in the response of managers and front line staff, the London Leaving Care Managers Forum discussed the guidance in February 2010. Many of the concerns raised were the same as those raised more generally:

- Making clear statutory requirements versus good practice
- Clarification on the requirements for each of the care leaver statuses and for qualifying young people
- Lack of material on further education
- Resources for the provision of PAs until age 25
- Those who do not meet thresholds for Adult Mental Health Services but would benefit from support
- Those in custody – accommodation, legal status if previously section 20 and planning for release.

Some issues were raised in the Managers Forum that were not found in other responses. The forum noted that:

- Clarification is needed regarding independent chairs for pathway plan reviews – is this needed for less complex cases or can there be “light touch” reviews?
- The difference in moving from regulated to unregulated placements and the process of leaving care was not stressed adequately. However, this issue is covered in the Care Planning, Placement and Case Review Regulations and Guidance – issued in March 2010 for implementation in April 2011.

Conclusion:

Response to the regulations and guidance is largely positive, although some specific concerns were raised by respondents. Although there are difficulties with hard statistical analysis (as discussed earlier), broad trends are identifiable. The concerns raised centred on:

- clarity,
- education,
- accommodation, and
- benefits and allowances.

There were strong feelings around the affordability of accommodation, the need to improve the interagency working protocol and the “Setting Up Home” allowance. Affordability of accommodation was linked strongly to concerns on

housing benefit and response to the setting up home allowance focused on variation in the allowance between local authorities.

Managers' views and concerns did not appear to differ significantly from those expressed by other respondents.

Respondents' views and concerns have been taken in to account and, as outlined above, revisions have been made to the final draft of this Guidance.

List of Responders

Annex A

Action For Children
ASCL
Audit Commission
Barnardos
Bedlingtonshire Community High School
Blackpool Council
Buckinghamshire Count Council
Cabinet Office
CAFCASS
Cambridgeshire County Council
Camden Council
catch-22
Centre Point
Children's Rights Director
Children's Services, Northumberland County Council
Council for Disabled Children and Transition Information Network
Derby City Council
Family Rights Group
Fostering Network
Foyer Federation
gallagher-1
Hampshire County Council
Helen Southworth MP
Hertfordshire County Council
Howard League for Penal Reform
Kent County Council
Leaving Care Service
Leicestershire County Council
London Borough of Richmond
London Borough of Tower Hamlets
London Leaving Care Managers
Medway Council
Milton Keynes CYPS
Missing links . Me
National Care Association and the Care Leavers Council
National Leaving Care Advisory Service (NCAS)
National Leaving Care Bench Marking Forum
national youth advocacy service
North Yorkshire County Council
Nottinghamshire County Council
Ofsted
Oldham Council
PATCH
Plymouth City Council
Prof Mike Stein
Refugee Council
Salford children's services
Shropshire County Council

Skill
Social Care Inclusion
Solihull Metropolitan Borough Council
South Tyneside Council
South West Regional Care Leavers Network
Staffordshire
Stoke on Trent City Council
Surrey County Council
Swiss
The Children's Society PAR Project
The Frank Buttle Trust
The National Fostering Agency
The University of Greenwich
Transition and leaving care team (Walsall)
VOICE
Wakefield Council
Warrington Borough Council
Warwickshire County Council
West Berkshire County Council
West Midlands Leaving Care Managers Network
Wirral Borough Council
Young People's Bench Marking Forum

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