



Who Cares? Scotland | Response to questions on draft guidance for Part 11 Continuing Care

17th September 2015

Contacts:

[Claudia Macdonald](#)

Director of Influencing

cmacdonald@whocaresScotland.org

[Carly Edgar](#)

Policy Manager

cedgar@whocaresScotland.org

Part 11 (Continuing Care)

1. Do you feel the guidance provides clarity on the responsibilities on local authorities in relation to Continuing Care? If not why not?

Generally, the information provided in this draft guidance, provides more clarity on what is needed to ensure the intentions of Part 11 of the Act are realised in practice. In this version of the guidance we welcome the expanded level of detail contained throughout in relation to the provision of continuing care; the welfare assessment and managing the situations where continuing care requests are not easily accommodated or provided (as they were intended to on the face of the Act).

We welcome that the guidance has resisted in over prescribing how local authorities should undertake their duties. We believe this is important in enabling local authorities time to work out, refine and improve the provisions they have in place, in order to best reflect and accommodate the needs of children who wish to exercise their continuing care right. However, this will mean that local authorities will need to be afforded the time and resources required to get this right over time. Whilst at the same time, ensuring current provisions are not hindering the full and effective implementation of this part of the Act, and negatively affecting the wellbeing and support afforded to children who wish to benefit from this new legal provision.

There are some scenarios, we believe, that are not easily remedied if the draft guidance remained unchanged. This includes:

- Where a young person wants to be in a continued care placement, **but** where this needs to be located in an area out with their current placement / local authority. E.g. if they were moving away to undertake further or higher education opportunities or to access training or employment opportunities.

- Where a young person leaves their supervision order, does not take up a continued care placement **because** they were not made aware of this option and where this was not considered or raised by the children's panel that made the decision, based on social work recommendation with agreement from the young person, to come off it. In this instance, **if** the young person can evidence that this was not presented as an option to them (and that is evidenced in the papers supporting the children's panel decision) and that they wish to take this option up and would have had it been considered with them, what provisions are there in both the draft guidance for CC and Aftercare to find an easy resolution to this? An easy resolution being that the young person is not expected to exercise a formal complaints procedure, experience the time frame that comes with that and be at risk of their wellbeing being negatively impacted upon as a result. The duty to inform the young person of this option, will be in breach here. However, it is only the young person that will be negatively impacted by this where this duty not fulfilled. There is a key role for panel members here (which is not clearly explained in the draft guidance for CC as it currently reads).

Additionally, there are some aspects of the draft guidance, which would benefit from the following insertions or expansion however, in order for children ceasing to be looked after, but who want to evoke their continuing care rights, to have the best possible experience of and access to that.

Eligibility for Continuing Care

Paragraph 48: insertion of 'housing department/social housing landlord' should be made to highlight the role that housing are expected to play in partnership with Aftercare teams. Therefore the sentence should read '*...if neither the relationship between a young person and their carer nor the accommodation can be maintained, it may be that the alternative provided by the local authority comes from another part of the service such as the Aftercare service and the housing department or social housing landlord*'.

Whilst the draft guidance does well to highlight the Section 25 duties contained within the 1995 Act, we believe that there are still issues with housing working in a pro-active way to accommodate care leavers into suitable accommodation in partnership with aftercare teams; so it warrants a reminder in the draft guidance at this stage. The guidance would also benefit from providing absolute clarity as to what types of tenancies and associated housing type should be available to young people in these situations. This should also be explicit as to what classes as unsuitable accommodation (e.g. emergency/hard to let stock/accommodation out with the preferred locality of the young person etc.). This is where the draft guidance would benefit from some explicit reference to the Housing legislation and relevant regulations for care leavers and young people and allocations policies.

Paragraphs 49 and 50 of the draft guidance refer to the option to provide alternative adequate accommodation if the current placement can no longer be provided. We would suggest that the guidance is amended to include a paragraph which expresses the importance of continuing important relationships, especially if the current placement comes to an end. If the current placement can no longer be provided, *but* the relationships with the carer/s are positive and responsible, then the draft guidance should indicate that the local authority should enable these relationships to continue. As part of the plans in place, the local authority should be encouraged to work with those around the child or young person, to ensure that relationships are not broken due to placement move only.

Young people continually tell us that relationships are important to them. They are the difference between leaving care in a supported way and leaving feeling isolated and despondent.

Managing the End of a Continuing Care Placement

In this section, there are several references made to the possibility of returning to care which could have the potential to confuse local authorities. **Paragraph 81** states:

“They cannot return to a Continuing Care placement under Part 11 of the 2014 Act.”.

Yet in **paragraph 82** it says:

“... it might be considered returning them to their Continuing Care placement if this is still available and possible.”

We would suggest greater clarity is taken when articulating these two options, so that Paragraph 81 says that whilst there is not right to return to their continuing care placement, it is possible for the local authority to consider if this option would be suitable (see paragraph 82). In light of the on-going Return to Care national working group discussions and the evidence being gathered as part of those, it is relevant that this draft guidance should be clear that **if returning to the same or similar care placement is decided to be in the best interests of the young person’s wellbeing and current situation, they this should be accommodated.** We recommend that this is echoed in the guidance supporting the interpretation of the Aftercare duties too.

2. Do you feel the guidance assists local authorities in exercising their Continuing Care responsibilities? If not what areas need to be expanded?

While the guidance attempts to assist local authorities in exercising their responsibilities by outlining examples of how they can assess, plan and provide Continuing Care, it does not do this in an overly prescriptive way. We believe this is appropriate for guidance which should allow local authorities to interpret their duties but have the flexibility to ensure any decisions are reflective of individual need. That said, we suggest that there could be some

minor revisions to the language throughout to ensure that consistent interpretation of the provisions in the draft guidance, which support the realisation of the intentions of the primary legislation, takes place. We believe this is necessary to ensure that no young person misses out on the opportunity of Continuing Care due to misinterpretation or mistaken application of the provisions in the draft guidance.

Since 1st April 2015, when Continuing Care came into effect, Who Cares? Scotland has witnessed confusion around the detail of the provision. This is understandable given that local authorities tend to rely on statutory or other guidance to help them in their interpretation of primary legislation. However, our experience since the commencement of Part 11, gives us reason to believe that continued confusion will only affect these vulnerable children and young people (and in a way in which the Act does not intend). In one situation, a social worker was operating under the belief that a young person could be both looked after and in Continuing Care at the same time. In this same situation, the social worker argued that the current independent care provider could not continue to look after this young person because of the associated cost and because they believed the young person did not require this level of support anymore. This is despite the young person's request to stay in the current placement as she felt settled there. The social worker's solution was to move the young person to hostel accommodation.

This example shows the areas in which a practitioner may misconstrue the detail of Continuing Care:

- That Continuing Care is a new legal status like 'looked after' and 'care leaver'.
- That cost and placement stability can be reasons for ending a current placement.
- That hostel accommodation is a suitable alternative for a Continuing Care placement.

While this is only one example, we believe that it clearly outlines the misinterpretation of Continuing Care, as well as the pressures that the local authority may face. The guidance should ensure it makes abundantly clear, the types of situations which are where wrongful interpretation of Part 11 can happen, and how the local authority should remedy and redress these. In these circumstances, it is only the child/young person who will be negatively affected and have their rights infringed. It is recommended that this is clearer in the draft guidance.

The reference in **paragraph 60** (Providing Continuing Care Placements) relating to the interest the children's panel would expect to show, is welcomed. However, as referred to in our response to question one above, to avoid doubt, we would recommend that the information in this paragraph give some further clarity on how this information would be made available to the panel and what would happen in the absence of this information being available to the panel as they attempt to make a decision on whether or not a supervision order should be removed.

3. Is the guidance clear on who is eligible for Continuing Care? If not why not?

This draft guidance provides considerably more information on the eligibility criteria for continuing care. However, we believe that in the practical application of this eligibility, greater clarity around who is entitled to continuing care and when should be provided. This information specifically relates to the extension of eligibility and age criteria.

Extension of eligibility

Paragraph 23 states:

“In order to provide local authorities and carers with adequate time to plan and prepare, the Scottish Government will introduce Continuing Care in a gradual process. In the first year (2015-16) only sixteen year old care leavers (who leave foster, kinship or residential care on or after 1 April 2015) will be eligible. These care leavers will have been born in the 12 months from 1 April 1999 to 31 March 2000.”

We would suggest that a tabular representation of the gradual extension of eligibility over time, would ensure professionals clearly understand who will be eligible and when. The following table is an example of how this could be depicted.

Year	Age of young people eligible for CC	Young people eligible for CC born between:
2015-16	16 year olds	1 st April 1999 – 31 st March 2000
2016-17	16 and 17 year olds	
2017-18	16-18 year olds	

Age criteria

Who Cares? Scotland recognises that there is a lack of understanding around the age criteria (only those born after 1st April 1999 are eligible) for Continuing Care. While we would urge all local authorities to align with the Staying Put guidance and encourage young people to stay in care for as long as possible, we recognise that in order to avoid raised expectations, this guidance must articulate clearly who is eligible.

For this reason we would like to see an earlier reference to eligible ages. We would suggest that in **paragraph 10**, which provides a definition of Continuing Care, a statement is included to highlight that this only applies to those born after 1st April 1999. A statement at the earliest opportunity, and then repeated throughout the guidance, will ensure clarity.

We also feel that the process map in Figure One could be better represented so that the opportunity for a LA to let a young person back into their continuing care placement (should it be deemed in their best interests, wellbeing and if it is still available) is reflected. This is encouraged as an option in the guidance provisions (paragraph 82).

4. Is the description of a Welfare Assessment for Continuing Care clear on how a local authority should carry out a Welfare Assessment and what areas of a young person's life should be considered in the assessment? If not why not?

As the Act and associated Secondary Legislation has passed through Parliament, the Coalition of Aberlour, Barnardos and Who Cares? Scotland, has shared concern over the Welfare Assessment for Continuing Care. The draft guidance provisions explain with far more clarity and detail how the Welfare Assessment should be used in practice – and this is welcomed and appreciated. We believe that with some slight amendments, the clarity needed will be fully contained in the draft guidance – in order to ensure the intentions of this are realised properly in practice and as we know Scottish Government wish them to be applied.

Who Cares? Scotland appreciates the information contained in **paragraphs 52-54** which urge the local authority to make every attempt to avoid the termination of a Continuing Care placement. These paragraphs may be strengthened by the inclusion of the following statement:

'It is believed that termination of a Continuing Care placement due to the identification of a welfare need that significantly adversely affects the welfare of a young person, will be a rare occurrence.'

We believe that the inclusion of this statement will ensure the local authority recognises the exceptional circumstances that ending a placement might occur under. In addition to this, **Paragraph 54** highlights the evidence that is required when terminating a Continuing Care placement:

'The Welfare Assessment should evidence how ending the placement will reduce the harm being caused to the young person. This should be clearly stated within the assessment.'

We believe, in addition to this statement, the guidance should be amended to include a sentence which will urge the local authority to seriously consider the alternative. An example of this could be as follows:

'If a welfare need is identified which significantly adversely affects a young person's welfare, the local authority must evidence how moving on (to independent living, with family members, or other) will improve and remedy the adversity.'

By providing a counter statement and requesting evidence, the guidance will provide greater protection against instances where a Continuing Care placement could be terminated inappropriately.

Finally, we would recommend that children or young people in a continuing care placement, which is subject to a Welfare Assessment process, are informed of support they can access to help them articulate their views as part of this process. Similar to **paragraph 95** (appeals, disputes and complaints), we believe that advocacy support should be offered to the child/young person. Given that children/young people in continuing care placements, are still in receipt of a high-level of support, the availability or promotion of this advocacy support would only ensure that they are empowered to continue to articulate their views as this may help them as they transition into adulthood and a gradual removal of the support needed around them.

5. Do you feel the guidance is clear on the options available to a local authority when planning for a looked after child? If not why not?

We would recommend that the draft guidance would benefit from being more clearly linked to other parts of the Act and supporting provisions in other pieces of legislation especially relating to Part 9 (Corporate Parenting); Part 5 (Child's Plan) and Part 10 (Aftercare) of the Act.

In order to realise the full intentions of the Act, it is advisable to reiterate the importance of collaboration amongst corporate parents in the CC guidance (with reference to Part 9 Statutory Guidance provisions). This is because, in practice, we need to redress the impact of practitioners looking only in isolation at the implementation of specific parts of the Act such as continuing care. The likelihood of this is high, given the pressures practitioners face and the resource constraints that are clear.

6. Are there any sections of the guidance you feel need to be expanded or removed?

Paragraph 95 (appeals, disputes and complaints) states *'This will mean that information, which young people can understand needs to be available as does other such support, for example advocacy'*. This is welcomed, as Who Cares? Scotland understands and evidence well how looked after children and care leavers both benefit from and access advocacy in order to realise their rights or remedy poor decision making processes within the care system. We would recommend however, that **paragraphs 87 and 89** also include information on how young people should be involved other support, such as advocacy where they are involved in these often daunting and very formal appeals and disputes processes. We are also keen to understand, for the benefit of providing clarity to the young person, how the new duties of the Scottish Commissioner of Children and Young People will support young people in situations where their rights relating to continuing care, have not been recognised.

7. Any other comments?

Overall this draft guidance is an informative and more detailed account of how to apply and interpret the Continuing Care Part of the Act. We thank the process undertaken by the Scottish Government in widely consulting on this Part of the Act and this draft guidance. This is a complex piece of legislation, which if applied as it was intended, will truly benefit and safeguard further the wellbeing of vulnerable children and care leavers as they progress towards independent living. Who Cares? Scotland will continue to capture examples via our advocacy workers, as to where misinterpretation of the provisions occur and also to highlight where good practice has been witnessed for the purpose of informing the sector and the Scottish Government as we all endeavour to get this right for every looked after child who progresses into continuing care and who we know will benefit as a result.

In that regard, we would therefore like to raise one final question, to those already mentioned before, in relation to this guidance:

- How will the Return to Care policy working group provisions and the associated evidence help inform this CC guidance (as emerging and ongoing evidence is directly relevant to the correct and consistent interpretation of this part of the Act)?