



Continuing Care and the Welfare Assessment

Frequently asked questions and good practice update

April 2021

Following the publication of the [Continuing Care and the Welfare Assessment Practice Note in November 2020](#), CELICIS, Clan Childlaw and the Care Inspectorate hosted three interactive webinars in January 2021 to support a more consistent approach to implementation. This Q&A has been produced using questions generated via the webinars. We have also added further information regarding the principles of 'good practice'.

Q1: Our local authority has recently produced a guidance/policy document which is currently awaiting final approval and then hopefully implementation. This incorporates the recent legislation, [Staying Put](#) guidance and the Continuing Care and the Welfare Assessment Practice Note. One of the things that emerged was the need for staff training to inform young people of their rights. However, some of the concepts are difficult for staff to get their heads around e.g. If continuing care is open to young people 'leaving care' between 16 and 18 years old yet they are staying in the same place with the same supports, how can they be regarded as 'leaving care'?

A: The wording and terminology can be misleading. The actual wording of Part 11 (Continuing Care) of the Children and Young People (Scotland) Act 2014 states that young people are eligible for 'Continuing Care' when they 'cease to be looked after', rather than when they 'leave care' – this refers to the change in the young person's legal status rather than them actually leaving a care placement. In practice this would mean when a Compulsory Supervision Order is terminated between the ages of 16-18; when a S.25 agreement is terminated; or when a Permanence Order lapses when a young person attains the age of 18. A young person 'staying put' in the same care placement under continuing care arrangements is not considered a care leaver.

Q2: Are private/independent children's homes required by law to offer Continuing Care, or are they just expected to promote it? Will this be monitored?

A: The legal duty to provide Continuing Care rests with the local authority. Continuing Care is available to all eligible young people who were looked after in foster care, in formal kinship care, and in residential care. This includes young people in foster care or residential education/care purchased by the local authority from private and third sector providers. One of the noted exemptions is where the carers/care provider is unable or unwilling to continue to provide the care placement. However, local authorities as corporate parents are expected to work collaboratively with providers of foster care and residential care to fulfil their obligation to provide Continuing Care. Individual care plans and service planning processes should anticipate, expect and plan for children and young people electing to 'stay put', with relational practice informing, guiding and supporting this. Additionally, service planning and commissioning processes should anticipate, expect and plan for young people



remaining in positive care placements as a matter of course. The Care Inspectorate will view Welfare Assessments if they are part of care planning sampling during inspection.

Q3: If a provider can't provide Continuing Care and the young person wants Continuing Care what would the young person's options be?

A: The duty is on the local authority to provide Continuing Care. Where the provider is unable or unwilling to provide this, the local authority should make every effort to provide a support of an equivalent standard, including maintaining existing relationships with carers if appropriate. There will be challenges in providing equivalent support and accommodation, particularly if a young person is no longer able to stay within a long established foster or residential placement. In this case the local authority should endeavour to provide accommodation and support which best meets the needs of the young person and should, at least, reflect the support and accommodation that would have been offered had Continuing Care been available.

Q4: If a person is subject to a Permanence Order (PO) is it correct that they cannot enter Continuing Care until they are 18 years old?

A: Continuing Care becomes an available option to eligible 'looked after' young people when they 'cease to be looked after'. Children subject to a Permanence Order (PO) are considered 'looked after away from home'. As the duties placed on local authorities relating to PO's extend until the child turns 18 then it should be assumed that the local authority considers and regards the child as 'looked after' until that point. If the child wishes to remain with the carers beyond this then this would be under Continuing Care arrangements. The child does not need to request Continuing Care. Forward planning and discussion would be good practice, but there would be no need to alter any legislative basis prior to the child turning 18 years old.

Q5: We have discussed that legally a child becomes a young adult at 18 years old, however, when supporting a young person through Continuing Care who is living/negotiating with developmental delay for instance, we may be working with young people who developmentally range from 11-15. Are there allowances made for the differences between developmental and chronological age in terms of holding on to our young people in children's home etc.?

A. The Welfare Assessment is intended as a comprehensive analysis of what support and accommodation the young person needs and will need into adulthood and as such would have to take account of the young person's developmental age and stage. The regulations set out the things that must legally be considered by the local authority in carrying out a Welfare Assessment. A comprehensive, holistic person-centred assessment would generally cover this as a matter of good practice. Continuing Care should not be used as an alternative to remaining 'looked after' under the 1995 Act if it is in the best interest of the young person. A young person who is currently 'looked after' under section 17(6) of the 1995 Act should remain 'looked after' up until the age of eighteen years if that is in their best interest and a young person can remain 'looked after' under the 1995 Act until the age of 21 if that is in their best interest.



Q6a: You said that Continuing Care is not the same supports in a different place - how does this apply to foster placements as the support needs of 17 year old will not change just because they turn 18, so the support provided by carers remains the same. However, carers are faced with changes to their support, particularly financially; **and:**

Q6b: What is the responsibility of the local authority when a carer/care provider is unable or unwilling to provide Continuing Care, however the child or young person wishes to remain in care until 21? **and:**

Q6c: If a provider can't provide Continuing Care and the young person wants continuing care what would be the young person's options? **and:**

Q6d: Most local authorities will cease financial support to kinship carers when a young person turns 18 years old. Should a local authority continue to pay up to the age of 21 years who remain in Kinship care **and:**

Q6e: If a carer did not wish to continue a placement does the local authority have responsibility to offer a similar placement if the young person wishes?
If the young person is in a care placement where the carer/provider is unable or unwilling to continue to provide the placement, then does a local authority have a duty to provide Continuing Care to an eligible young person? The law does not make any rules about how continuing care placements must or should be funded and is this is a matter that the local authority and the carer/provider have to resolve?

- A.** The guidance clearly emphasises that the only reason for failing to provide Continuing Care is if to do so would significantly adversely affect the welfare of the young person (section 26A(5)(c)). The guidance specifies that where Continuing Care in a long established foster placement cannot be provided due to the circumstances above, the local authority may not be able to provide equivalent support and accommodation. However, they should then provide accommodation and support which best meets the needs of the young person and should, at least, reflect the support and accommodation that would have been offered had Continuing Care been available. The guidance states that local authorities as corporate parents are expected to work collaboratively with providers of foster care to fulfil their obligation to provide Continuing Care. It also says that a local authority should carefully consider the financial implications for a carer offering a Continuing Care placement to ensure that a lack of financial support is not a barrier to the continuation of the placement regardless of whether the young person is in a residential, foster or looked after kinship care placement.

Q7: Does the drawing up of a 'Continuing Care agreement' perhaps go against the idea of it not 'being conditional on compliance'?

- A.** There is nothing to prevent a local authority or provider asking a young person to sign a Continuing Care agreement or contract, however, the agreement makes no legal difference to the provision of Continuing Care – it is legally worthless. If the young person is eligible then Continuing Care must be provided when they cease to be looked after. No agreement – or breach of an agreement - would change that duty.



Continuing Care must be provided until the young person is 21 years old. No agreement – or breach of an agreement - would change that duty. The duty to provide Continuing Care only comes to an end if the young person leaves the accommodation of their own volition; the accommodation ceases to be available; or the local authority show through a welfare assessment that continuing to provide the care would significantly adversely affect the welfare of the person and explicitly evidence and record how ending the placement will reduce the harm being caused to the young person. It must also be shown in a Welfare Assessment how any new accommodation will address the issue that is significantly affecting the young person's welfare, and why this could not have been addressed while staying in the original placement. A young person not conforming to a 'Continuing Care agreement' is not a legal reason to end a Continuing Care placement.

Q8a: Who is responsible for the assessment and finance for a 'looked after' child placed out with their authority; **and:**

Q8b: What are the responsibilities of local authorities when the young person is in care outwith their home local authority area and their wish is to remain in this area for Continuing Care or aftercare?

- A.** The local authority who last 'looked after' a young person remain responsible for them and must carry out the Welfare Assessment of the placement that the young person is in when they ceased to be 'looked after'. The guidance states that a young person should be provided with Continuing Care and/or aftercare even if that placement is out with the responsible local authority's area. If they have lived in the placement for a significant period and have established relationships, education and/or employment in that area and wish to remain there they should be supported to do so. However, moving the young person out of their placement to a new placement is a failure to provide Continuing Care. The local authority can only do this if they show through a Welfare Assessment that continuing to provide the care - in the original out of area placement - would significantly adversely affect the welfare of the person and explicitly evidence and record how ending the placement will reduce the harm being caused to the young person. It must also be shown in a Welfare Assessment how any new accommodation will address the issue that is significantly affecting the young person's welfare, and why this could not have been addressed while staying in the original placement. The Children (Scotland) Act 1995 sets out expected co-operation between local authorities and local authorities may wish to enter into financial agreements with each other regarding continuing care and the management of support to the young person.



Q9: Is the local authority responsible financially if the young person is in education after the age of 18?

A. The local authority must provide continuing care to all young people whose final 'looked after' placement, on or after their 16th birthday, was in foster, kinship or residential care. The local authority must do this regardless of the age of the young person. The local authority must do this whether or not the young person is in education. The duty to provide continuing care lasts until the young person is 21.

Q10a: Can young people challenge the outcome of a Welfare Assessment; **and:**

Q10b: What happens where a young person wants to remain in the home and are settled and doing well with no educational provision, training or work and the local authority wants to move them?

A. Yes. A young person will need advice from a lawyer about whether or not challenge is possible. A young person will not be able to challenge an assessment simply because they disagree with it. They may be able to challenge the decision if the correct legal decision making process has not been followed, if the local authority is not confirming with its legal duty, or if there are not valid reasons for the decision. It is essential that the young person gets legal advice and assistance before any move takes place. It is important they get legal advice as soon as possible as there is a time limit on taking legal action to challenge a Welfare Assessment.

Principles of Good Practice.

The principles of good practice were set out in the [Staying Put Scotland Guidance \(Scottish Government, 2013\)](#). This document provides the philosophical underpinning for [Part 11 \(Continuing Care\)](#) of The Children and Young People Act 2014. More recently, the Independent Care Review and [The Promise](#) has made clear its expectations of how care experienced young people should be cared for and supported on their journey to adulthood.

[Staying Put Scotland Guidance](#) states that:

End-of-care planning decisions should be based on meeting the needs of the individual, rather than age or legal status (Scottish Government, 2013)

The following principles should be at the heart of all good practice for young people transitioning from care to adulthood and interdependence

- Young people are encouraged, enabled and empowered to remain in positive care settings until they are ready to move on.
- 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.
- They must be provided with information about the options available to them (in a timely manner), and given the support to evaluate those options properly.



- No looked after young person leaves care without the skills and support necessary for success.
- Staff across local authorities – and all agencies with corporate parenting responsibilities – will want to ensure that a looked after young person leaves their care placement with the practical skills and networks of supportive relationships that underpin successful adult life.
- As part of the assessment corporate parents will want to satisfy themselves that care leavers demonstrate an appropriate level of 'emotional readiness'.
- Local Authorities and their corporate parenting partners will have made explicit their commitment to the 'Staying Put Scotland' approach.
- Local Children's Services Plans and other relevant planning documents should be clear about the localities commitment to care leavers, and support for the 'Staying Put' approach.
- Clear and explicit statements in strategic plans also encourage organisations to own the Staying Put agenda at a corporate level.

[The Promise](#) states that:

- *Young people who are currently in the 'care system' either staying in their care setting as they enter adulthood (if they want to) and when ready being fully and completely supported to move on.*
- *Young care experienced adults being properly and holistically supported, recognising their needs and rights in relation to housing, education, finance and employment and relevant health services.*

In addition, The Promise [Plan 21-24](#) states that:

- *Decisions about transitions for young care experienced people who move onto independent living or need to return to a caring environment, will be made based on individual need. Each young care experienced adult will experience their transition as consistent, caring, integrated and focussed on their needs, not on 'age of services' criteria.*

Relationships and Practice Culture

Becoming an adult is not something that simply happens on an 18th birthday: becoming an adult is a process not an event. There is therefore a need to support carers and practitioners, to highlight positive practice examples to inform a practice culture which explicitly acknowledges and supports the complexities of caring and supporting young adults. The importance of relationships and positive social connections and networks cannot be overstated, and is highlighted through research evidence, policy and guidance.

Relationships are at the heart of good practice.



The Part 11 (Continuing Care) Guidance aims to reinforce not only the legal responsibilities but importantly the **ethical** responsibilities that local authorities have towards looked after young people and care leavers. The legislative and policy framework places duties and responsibilities on local authorities and makes clear the intentions of ensuring young people are **encouraged, enabled and empowered** to stay put in continuing care until they are ready to make a gradual, extended and supported transition to adulthood. However, legislation and policy can only take us so far, and it is the practice culture which must ensure duties are fulfilled and rights are realised.

“Strong belts and braces don’t make good trousers; procedures and guidelines can help but the fundamental fabric is the culture” (Kent, 1997).

For further clarification, advice and guidance please contact:

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