

**Consultation Questions - Planning Transition to
Adulthood for Looked After Children Guidance and on the
amended Children (Leaving Care) (England) Regulations
2001)**

RESPONSE

FAMILY RIGHTS GROUP

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Family Rights Group is a charity in England and Wales that advises parents and other family members whose children are involved with or require social care services. We run a confidential telephone advice service for families. Established as a registered charity in 1974, we work to increase the voice children and families have in the services they use. We promote policies and practices that assist children to be raised safely and securely within their families, and campaign to ensure that support is available to assist grandparents and other relatives who are raising children who cannot live at home.

Overarching Consultation Questions.

Q1. We are interested in your views about whether we have identified the right priorities so that care leavers are provided with the support they need to make a positive transition to adulthood?

Whilst in general we feel that the correct priorities have been identified for care leavers, we remain concerned about the guidance relating to the roles of personal advisors (see answers to Q 3 and 6 below), and more generally the absence of sufficient weight being given to the role of parents and carers in future planning for care leavers. In particular, the current leaving care guidance refers at the outset to the importance of

families and working with parents (section 1 para 7) and the need for the local authority to work in partnership with the young person's parents, or carer, wherever possible (section 1 para 14). In addition, the guidance specifically recommended that parents should be invited to help formulate the Pathway Plan and, for qualifying children, the continuing care plan (section 4 para 5). These important principles appear to be missed out of the proposed new guidance under consultation. We would like to see them included in the new guidance.

Q3. We are interested in your views on whether the general direction of travel within the Regulations and Guidance is right. Is it helpful to include the provision for eligible children within the Care Planning, Placement and Case Review Regulations and guidance or should the requirements set out in Regulations 42-46 of those Regulations¹ be included in specific Regulations concerned with support for all care leavers aged 16-25?

In our view it is not helpful to include provision for eligible children within the Care Planning Placement and Case Review (CPPCR) Regulations and guidance rather than within the Leaving Care regulations and guidance. In our view this has led to some errors within the drafting of regulations as regards the role of personal advisors (see further below). Furthermore, although clearly there is some overlap for eligible children in terms of the content of the CPPCR guidance and the leaving care guidance, it would be better in our view to simply cross reference the leaving care guidance where appropriate, but have all the guidance relating to children leaving care in one place.

Although in the new CPPCR regulations, reg 46 now omits the requirement on a personal advisor to participate in the assessment and preparation of the pathway plan, this remains in the CLC reg 2001 as amended, in relation to relevant children and former relevant children. In our view this adds confusion to the proper role of the personal advisor, which should be the same for both eligible children as for relevant children, and should reflect the guidance given by Munby J (as he then was) in *R (G) v Nottingham City Council* [2008] EWHC 400 (Admin) and *J v Caerphilly County Borough Council* [2005] EWHC 586 (Admin) which is set out in more detail in answer to Q6 below. For clarity, it would be better if the requirement to participate in the assessment and preparation of the pathway plan were omitted from the amended 2001 regulations as well.

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<http://www.dcsf.gov.uk/consultations/index.cfm?action=consultationDetails&consultationId=1678&external=no&menu=1>

Chapter 2 - The Legal Framework: categories of children entitled to leaving care support

Q4. Is the information in this chapter clear. Is the information about potential “leaving care” support for qualifying children and children easy to understand and helpful?

We are pleased to note that children subject to a Special Guardianship Order who are also ‘qualifying children’ are specifically mentioned in the guidance. However, we feel that this section of the guidance could be clearer, particularly because in this scenario, it will be the Special Guardian or the young person who may be referring to the guidance to see what services are available to them – in addition to professionals who use the guidance. We suggest that the section on special guardianship at para 2.10 should cross reference other parts of the guidance that are also relevant to these children, for example in para 2.14 cross referring to the relevant paragraphs on qualifying children (2.10 and 2.12) - and to section 8 ‘Financial Assistance for Care Leavers qualifying for advice and assistance under section 24(2) ‘Qualifying Young People’.

Chapter 4 - Personal Advisers

Q6 Does the Guidance clearly describe how the personal adviser is expected to carry out their functions?

No.

The guidance does not adequately incorporate the principles set out in the judgment of Munby J (as he then was) in *J v Caerphilly County Borough Council* [2005] EWHC 586 (Admin) and re-stated in *G v Nottingham City Council* [2008] EWHC 400 (Admin) (2008).

The guidance does not adequately explain the importance of the separation of roles between the personal advisor (PA) and those who are carrying out the assessment and preparing the pathway plan. It does not state that the PA should not be involved in the assessment process, nor the preparation of the plan as per Munby J, in fact it implies that the PA may have an active role in the process, which the court clearly held to be unlawful in both the above cases. See *J v Caerphilly* at paragraph 30:

“It is not part of the personal adviser’s functions to undertake the statutory assessment...or the preparation of the pathway plan, nor should he do so”

“His vital role and function are apt to be compromised if he is, at one and the same time, both the author of the local authority’s pathway plan and the person charged with important duties owed to the child in respect of its preparation and implementation.”

Although the draft CPPCR regulations, reg 46 now omits the requirement on a PA to participate in the assessment and preparation of the pathway plan, this remains in the CLC reg 2001 as amended by the draft 2010 regulations, in relation to relevant children and former relevant children. For clarity, it would be better if this were omitted from the 2001 regulations as well.

It is surprising that reg 3 of the 2001 regulations will now be omitted, which requires the LA to take steps to enable the young person to attend and participate in meetings about their plan. Again, the case law above stresses the importance of engaging with the child, even where that child is hard to engage. (see *J v Caerphilly*, para 56). Moreover this requirement is not stated strongly enough in the new guidance.

The case law referred to above also stressed the importance of a plan being clear in identifying needs AND the actions to be taken, by whom and when. Munby J stated:

“To repeat, because the point is so important, and a clear statement of what is required may assist not merely this but other local authorities: A pathway plan must clearly identify the child’s needs, and what is to be done about them, by whom and by when. Or, if another aphorism would help, A pathway plan must spell out who does what, where and when.”
(para 45 *J v Caerphilly*)

The guidance does not appear to make clear the importance of this level of detail and specificity, and of more concern does not even repeat para 7.7 of the existing guidance which states

“The Pathway Plan should be explicit in setting out the objectives and actions needed to achieve these; this should include who is responsible for achieving each action and timescale for achieving it.”

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