

## Carers Legislation – Consultation on Proposals – January 2014

### General Comments

I welcome proposals to improve the identification and support of all carers in Scotland. However, whilst these proposals state they will assist all carers, many of the proposals specifically exclude young carers, on the understanding that their needs will be met through the GIRFEC/Named Person provisions of the Children & Young People (Scotland) Act 2014.

I do have some concerns about this approach, given that many of the provisions of the 2014 Act are still to be fully explored through secondary legislation and guidance. I would urge the Scottish Government to be particularly aware of the risk that young carers could be unintentionally disadvantaged by this approach, leading to them being less visible or receiving less targeted support. Sufficient safeguards need to be introduced to guard against this. Otherwise, young carers and the specific issues they face run the risk of being lost in a more generic process.

I have restricted my comments in this response to the areas which I believe are of particular significance to young carers and young adult carers.

### Carers' Support Plans

I am supportive of the proposal to create Carer Support Plans and to offer these to all carers. Focusing on a carer's support needs, rather than assessing their ability to care, appears to me to be an approach that is likely to ensure more carers seek the support that they need.

I am concerned, however, that young carers do not currently fall under these proposals, other than when transitioning to young adult carer. I believe that there should not be an assumption that young carers' needs will automatically be met by a more general Child's Plan (or indeed that all young carers will have a Child's Plan). I would suggest that there should be specific provision in any forthcoming Carers' legislation to ensure that young carers' support needs will be adequately assessed and met as part of a Child's Plan. Young carers should be able to request that this assessment takes place or ask to be re-assessed when they feel this is necessary (e.g. when there is a change in their caring situation).

Young Carers are already entitled to support under existing legislation, including under the Education (Additional Support for Learning) (Scotland) 2004 Act (As Amended). In a recent Scottish Government report<sup>1</sup>, however, it was identified that “effective practice in identifying the needs of young carers was developing slowly”. Whilst there were pockets of good practice, there was little to indicate that this good practice was being shared and replicated consistently across Scotland. The report also indicated that only 441 young carers were receiving additional support under the ASL legislation, i.e. they had a Co-ordinated Support Plan, Individualised Educational Programme or a Child’s Plan<sup>2</sup>. A number of Local Authorities reported that they were supporting no young carers under this legislation, which suggests that relying on existing mechanisms to identify and support young carers will be insufficient to meet the needs of young carers across Scotland.

### **Young Carers’ Local Strategies**

I would suggest that one way of monitoring consistency in provision would be to introduce a statutory requirement for Local Authorities and Health Boards to produce a Young Carers’ Local Strategy. I do not believe that it is sufficient for Local Authorities to continue to do so on a voluntary basis, given that many currently opt out from this process. These strategies will help ensure that young carers are identified and their individual needs met at a local level. Whilst I acknowledge that a Children’s Services Plan may pick up on some of the requirements of young carers in an area, I believe that it requires a more detailed strategy to sit alongside it, in order to provide a true picture of the specific needs of young carers.

At present, the level of support available to young carers varies widely and I believe the introduction of Young Carers’ Local Strategies would also help ensure parity of support across Scotland, in particular for those young carers living in areas where support may be harder to access.

A requirement for local authorities to carry out a Children’s Rights Impact Assessment<sup>3</sup> of their Young Carers’ Local Strategy would also be welcome.

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<sup>1</sup> Additional Support for Learning and Young Carers – Report to Parliament, Scottish Government, 2013, p.16

<sup>2</sup> Additional Support for Learning and Young Carers – Report to Parliament, Scottish Government, 2013, p24

<sup>3</sup> [http://www.sccyp.org.uk/uploaded\\_docs/children's%20rights%20impact%20assessment.pdf](http://www.sccyp.org.uk/uploaded_docs/children's%20rights%20impact%20assessment.pdf)

## Identifying Young Carers

The Scottish Government has outlined that the aim of these proposals is “preventative action and early intervention”<sup>4</sup> for all carers. This is consistent with the early intervention/preventative model promoted by the Children & Young People (Scotland) Act 2014.

The current proposals appear to rely on the assumption that the Named Person will be aware – or will be made aware - of the child or young person's caring responsibilities, under Part 4 of the Children & Young People (Scotland) Act 2014.

Whilst it is possible that other agencies will be providing support to the young person, who might highlight the young person's status to the Named Person, this may equally not be the case, particularly if the young person appears to be managing well or if their caring role may not be clearly defined (e.g. where they are acting as a carer to a sibling). In these circumstances, the Named Person may be the only person in a position to identify what is really happening in the young person's life.

The Young Carers Strategy 2010-2015 clearly identifies workforce training as key to ensuring young carers are identified in a range of settings<sup>5</sup>. It is crucial, therefore, that Named Persons receive specialist training and advice in order to ensure that they can correctly identify young carers, provide the support they need in a school setting and direct them to other local support, as required.

Young carers have reported that their caring status is often only picked up when difficulties arise, for example, where there are attendance issues or where they are struggling to hand in homework on time.<sup>6</sup> If the young person has not been identified as a young carer, then there is the potential for a young person to feel that they are being treated unfairly if they are punished by the Head Teacher/Named Person for something that is directly related to their caring.

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<sup>4</sup> Carers Legislation – Consultation on Proposals – January 2014, p5

<sup>5</sup> Getting It Right for Young Carers – The Young Carers Strategy for Scotland, 2010-2015, p4

<sup>6</sup> Scottish Young Carers' Festival Report 2013

Clearly this is not what the 2014 legislation envisaged and I would be keen to explore which safeguards the Scottish Government are going to put in place through Guidance to manage this potential conflict of roles.

### **Stages & Transitions**

Young carers have consistently highlighted difficulties associated with moving from young carer services to adult services. Young carers at the Scottish Young Carers Festival reported that this was a worrying time for many young carers, who felt that their support network would be withdrawn purely on the basis of their age.<sup>7</sup> They also highlighted the paucity of support services for young adult carers, who are too old for young carer services and too young for many adult carer services (which often cater to those looking after older people).

Another key transition for young carers involves moving into further and higher education. A report by Dundee Carers' Centre in 2010 found that "the impact of poor school attendance was identified as a major barrier to accessing further education and employment"<sup>8</sup>.

It is crucial, therefore, that education professionals provide support at an early stage, not just at the point of transition. Young carers have highlighted that being offered some basic flexibility by their school (e.g. the ability to hand in work late without penalty) can make an important difference to their later life chances.<sup>9</sup>

Like adults, young carers may need differing levels of support at different stages of their caring. Any plans that are created will need to be regularly monitored, to ensure they are still meeting the needs of the young carer.

I would further note the Scottish Government's stated commitment to ensuring flexibility in the application of the Education Maintenance Allowance scheme in relation to young carers<sup>10</sup>. This will be a welcome move and will help provide stability for young carers

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<sup>7</sup> Scottish Young Carers' Festival Report 2013

<sup>8</sup> "How no? Young adult carers' experiences of barriers to further education, training and employment in Dundee", Dundee Carers Centre, 2010

<sup>9</sup> Scottish Young Carers' Festival Report 2013

<sup>10</sup> Carer's Legislation – Consultation on Proposals – January 2014

attempting to stay on at school, who might otherwise lose their allowance, due to attendance issues/lateness associated with their caring role.

### **Supporting Young Carers (Other Than Provision of Information & Advice)**

I support the introduction of a more pro-active duty to support young carers. I believe that this is helpful in that it creates an assumption that young carers will require some support to enable them to carry out their caring role, rather than the onus being on the young carer to seek help.

If there are to be eligibility criteria attached to this, then I would urge careful thought about how this might work in practice. For example, I am unclear where this might sit within the GIRFEC/Named Person approach, which would suggest that if the young carer has a support need affecting their well-being, then this need should be met. I would suggest that the young carer's best interests should always be the primary consideration in deciding what support it is most appropriate to offer, in line with Article 3 of the United Nations Convention on the Rights of the Child (UNCRC).

I am supportive of the proposal to place Local Authorities under a duty to provide short breaks, where young carers would find this helpful. However, additional funding should be provided for this purpose and short breaks should not be offered at the expense of existing young carer services.

Finally, where young carers decide they no longer wish to carry out a caring role, then they should be fully supported to do so<sup>11</sup>.

### **Carer Information**

I welcome the Scottish Government's commitment to improving the provision of information and advice to local carers, including young carers.

If local authorities were placed under a duty to establish and maintain a service for providing information and advice, careful thought would need to go into a) how this could be made young person friendly and b) whether this was what young carers would find most helpful.

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<sup>11</sup> p.14 Scottish Young Carers Festival Report 2013

Our experience is that young people tend to be more confident contacting services that are directly marketed towards them and where they can be sure of an age appropriate response.

Whilst the provision of information and advice is vital, young carers have been clear that it is face to face support that they value most, whether that be through a young carers' group or through a young carers' worker in their local area<sup>12</sup>. The Young Carers' Strategy states that there are already dedicated young carer services in 29 Local Authority areas in Scotland<sup>13</sup>. These services, however, are often under-resourced in relation to the level of demand placed upon them<sup>14</sup>. I would suggest that it may be preferable to increase funding and develop existing local young carer services further, rather than try to develop new services specifically to offer information and advice.

Given my previous comments about the identification of carers through the Named Person provisions, I would also be keen to see information and training provided to both education and health professionals to help in the identification of young carers at an early stage.

### **Involving Young Carers**

I agree that young carers should be fully involved in planning, shaping and delivering the services that directly affect them.

One of the key messages from young carers is about the importance of being listened to<sup>15</sup>. Article 12 of the UNCRC states that children and young people have the right to have a say in decisions affecting them. Young carers have consistently reported that they are not listened to, in particular by those offering care and support to the person they are caring for.<sup>16</sup>

When decisions are being taken about a cared for person's care, then young carers should always be encouraged to have an input into this and advocacy support should be made

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<sup>12</sup> pp20-21, Scottish Young Carers Festival Report 2013,

<sup>13</sup> p.57, Getting It Right for Young Carers: The Young Carers Strategy for Scotland, 2010-2015

<sup>14</sup> p.59, Getting It Right for Young Carers: The Young Carers Strategy for Scotland, 2010-2015

<sup>15</sup> Scottish Young Carers' Festival Report 2013

<sup>16</sup> Scottish Young Carers' Festival Report 2013

available to enable the young carer to participate fully. This is crucial in ensuring young carers feel valued. It also provides an opportunity for them to share key information with professionals, particularly where they are the person's main carer.

When creating a support plan for young carers, then I would also expect a young carer to be fully involved in deciding what support is most helpful to them.

Again, training for medical and education professionals, preferably with an input from young carers themselves, will help highlight the importance of being fully inclusive of young carers, and in turn provide the young carer with a sense that they are improving experiences for young carers in future.

### **Conclusion**

Young carers face a number of challenges as part of their caring role. The one challenge they should not face is in accessing support.

I hope the Scottish Government finds these suggestions of assistance.

**Tam Baillie**

**Scotland's Commissioner for Children & Young People**

**23/4/14**