

Suzanne Allan
Looked After Children Consultation
The Scottish Government
2C-S
Victoria Quay
Edinburgh
EH6 6QQ

10 April 2008

Dear Ms Allan

Consultation on Looked After Children (Scotland) Regulations

NCH Scotland's projects work with some of the most vulnerable and difficult to reach children, families and young people in Scotland. NCH Scotland welcomes the opportunity to respond to the Scottish Government's consultation on the Looked After Children (Scotland) Regulations ("the Regulations"). Our response addresses certain general issues around the need to improve outcomes for looked after children, as well as some of the specific questions raised by the consultation document. NCH Scotland's response draws upon our experience of providing support to looked after and accommodated children at a number of projects. These include, for example, Foster Care NCH – CAPS Glasgow, Foster Care North, the ISSC Project in Ayrshire, the Moray Residential Units, the North Lanarkshire Youth Justice Fostering service and the Western Isles Residential Unit. For ease of reference we have used the same headings as the consultation document.

In summary the key issues NCH Scotland wishes to raise are:

- **We believe that the Scottish Government and local government should continue to make safeguarding and promoting the well-being of looked after children a key priority;**
- **NCH Scotland welcomes the Scottish Government's commitment to take forward the key issues in *Looked After Children and Young People: We Can and Must Do Better*;**
- **We also welcome the Scottish Government's commitment to reflect the *Getting it right for every child* approach in the Regulations, and to make the child's needs the starting point for the regulatory framework;**
- **Further action must be taken to ensure young people have an appropriate care package to meet their needs upon leaving care, including suitable accommodation, and improved access to key services;**
- **We believe urgent action should be taken to increase opportunities in employment, education and in training to ensure that greater numbers of these vulnerable and difficult to reach children fulfil their potential; and**

- **NCH Scotland believes it is vital that, in order to improve outcomes for children in foster care, in kinship care and in residential care, a maximum level of placements should be introduced**

Part I - General

NCH Scotland believes that the Scottish Government and local government must continue to make safeguarding and promoting the well-being of looked after children a key priority. We, therefore, welcome the Scottish Government's commitment to take forward the main themes in *Looked After Children and Young People: We Can and Must Do Better*.

We also take the view that, to ensure the Regulations benefit the maximum number of looked after children, suitable funding must be put in place to accompany the Regulations. In this respect, it would be helpful if the Scottish Government could confirm what its expectation is regarding the level of funding local authorities will make available, under the Single Outcome Agreements, to meet their duties and responsibilities under the Regulations.

NCH Scotland notes that the Scottish Government will shortly be advertising for a contractor to provide training on the Regulations. NCH Scotland considers it essential that such training recognises, and reflects, the fact that looked after children are amongst the most vulnerable individuals in our society. In view of these factors, the Scottish Government might wish to give consideration to funding the involvement of young adults who have been in care in the training on the Regulations, and/or consulting organisations working to support looked after children, about the design and delivery of such training.

Q1. Please consider the definitions and comment as you feel appropriate

NCH Scotland recommends that, for ease of reference, the definition of a child who is looked after should be included in Regulation 2.

Part II – Planning for Looked After Children

Q2. In line with Getting it Right for Every Child, we have been asked to consider using the term 'child's plan'. Do you agree with this suggestion?

NCH Scotland notes that the Draft Regulations refer to a child's "care plan". We believe that this should be changed to young person's care plan, as many teenagers who are looked after would not wish to be described as children.

NCH Scotland also believes that urgent action is required to increase the opportunities available in employment, education and in training for young people leaving care. This is necessary to ensure that greater numbers of these vulnerable and difficult to reach young people fulfil their potential. Planning for looked after children will play an important part in this process. Against this background, NCH Scotland believes it is vital that the care plan should include an outline of the support which will be put in place for the young person once they have left care, including suitable accommodation, and improved access to key services.

We welcome the Scottish Government's commitment that a looked after child "should not be moved about between placements unnecessarily". NCH Scotland believes it is vital that, in order to improve outcomes for children in foster care, in kinship care and

in residential care, a maximum level of placements should be introduced. Many of these children and young people have been placed in care in the most traumatic circumstances. They require a safe, stable and secure environment, together with emotional support, which carers can provide to give them the chance to turn their lives around. Unfortunately, for a significant number of these children, the trauma around the circumstances leading to their being placed in care is often exacerbated by the number of successive placements they will require throughout their childhood in care. To put this in perspective, figures produced by the Fostering Network indicate that almost one in three (30%) children and young people in foster care in Scotland are moved more than 3 times in their first year in foster care, compared to one in eight in England (13%); NCH Scotland, Factfile Scotland 2006 – 2007, <http://www.nch.org.uk/uploads/documents/569.pdf>.

NCH Scotland is aware that the upheaval caused by successive placements can have an adverse impact on the lives of these children and young people. We believe that introducing a maximum level of placements would help to provide a greater level of stability in their lives. We consider that the placement level should depend upon the needs of the individual children or young people. Placements should also give full recognition to sibling placement requirements.

Q3. Statistics published in November by the Scottish Government indicates that 25% of looked after children do not have a current care plan. How could regulations be strengthened to ensure this important requirement is met?

We believe that, in order to improve outcomes for looked after children, it is essential that each child should have a care plan put in place within a specified period. The Regulations can strengthen this process by specifying the maximum timescale within which a care plan must be put in place.

NCH Scotland also takes the view that consideration should be given to including the need for each looked after child to have a care plan as one of the National Indicators and Targets in each local authorities' Single Outcome Agreement.

Q4. Should the regulation contain a timescale e.g. 2 weeks by which the care plan should be drafted?

Yes. Two weeks would appear to be adequate.

Q5. The regulation states that the information about the child in Schedule 1 should be obtained and recorded. Should anything else be added to Schedule 1?

Schedule 1 should also require the child's parent's or parents' contact telephone numbers to be obtained to ensure they can be contacted in emergency situations.

NCH Scotland believes the reference to the child's "religion" in Schedule 1 should be extended to include information about the child's religious practice. This will help carers to respect the child's religious requirements.

Q6. Should adherence to the Code of Practice on records management be specifically mentioned?

Yes. This will underline local authorities' duties and responsibilities in this area, and help to provide clarity.

Q7. Is the list in Schedule 2 complete? If not what needs to be added?

NCH Scotland believes it would greatly assist transitional planning if Section 8 in Part 2 of Schedule 2 was amended to include a requirement for the local authority to provide a clear, time scaled exit strategy, particularly in relation to children leaving Transitional Units.

Q8. Do we need to add anyone else? Should there be any caveats or exceptions e.g. for child protection purposes?

NCH Scotland considers it vital that an individual(s) should not receive a copy of, or be involved in the process of agreeing to the contents of, a child's care plan if there are any child protection concerns about that individual.

Q9. Government is keen to ensure children and young people are enabled to participate in planning and decision making around their care, for example through independent advocates. Is this an area that should be covered in these regulations?

Yes. We believe there are many areas in which independent advocates can support young people to participate in the planning, and decision making, processes around their care. This includes, for example, helping young people to appeal decisions relating to their care. In addition, the child's care plan should include a requirement for the local authority to confirm, after consultation with the child, who would be best qualified to provide advocacy support for the child.

NCH already has a system in place where young people can access independent advocates, and we would be happy to provide further details of our best practice in this area upon request.

Q10. Are there any further matters that need to be considered when placing children elsewhere than with their parents?

NCH Scotland believes it is essential that the wishes of the child must be taken into account when placing children elsewhere than with their parents.

We take the view that, where a child is placed in a residential establishment, the needs of other young people in the residential establishment, and the number of staff in the establishment should also be considered, along with the staff's experience, qualifications and training.

Q11. Do you agree with the 6 month timescale? If not what would you propose and why?

NCH Scotland generally agrees with the 6 months' timescale. We believe, however, that a shorter timescale should be considered for young people in residential care to reflect their circumstances.

In NCH Scotland's experience a young person in residential care for six months tends to remain in residential care. We, therefore, take the view that consideration should be given at three months towards a more suitable stable or long term provision. As part of this process, the views of the young person must be taken into account in developing a care plan to address their long term needs.

Q12. Do you agree with these timescales? If not what would you propose and why?

We believe that, in principle, the timescales outlined in Regulation 8 for local authorities to review the cases of children placed with them are adequate.

NCH Scotland is, however, concerned that the phrase “where practicable” in Regulation 8(3) (c) of the Draft Regulations, could result in local authorities’ resources not being made available to meet this requirement. We take the view that the phrase “where practicable” should be amended to highlight that this in relation to emergency situations, but that in normal circumstances there is a general expectation that a review will take place where a Hearing is planned in advance.

Q13. We believe there is scope for improvement in the process here and would be interested in your comments?

From our experience within NCH Scotland’s Buckie residential Unit, Moray Council adheres to the process of holding a review meeting prior to any Children’s Hearing. This consistent approach is effective and helps to promote the child’s wellbeing, as each party is informed and is prepared for the Hearing. NCH Scotland strongly recommends this practice and, as indicated above, takes the view that, with the exception of emergency situations, a review should always take place prior to any Children’s Hearing.

We believe that a review should also take place where a child is placed in a new family placement.

Q14. Do you have any comments?

NCH Scotland welcomes the proposals relating to the review of a child’s case where a Permanence Order has been made. We believe, however, it is important to ensure that an independent advocate is available to support the young person on issues around the Permanence Order should they require it.

Q15. Is this provision satisfactory for identifying needs and ensuring they are met, particularly while the child is looked after and accommodated?

It is current practice to record decisions made at meetings concerning a young person. NCH Scotland is aware, however, that the timescale between a meeting taking place and receiving a record of the meeting can often vary greatly i.e. between 3 days and 8 weeks. We recommend that the record should be received no later than 7 days after the meeting.

We welcome the clarification provided by Regulation 11 regarding the health requirements of a looked after child before they are placed.

Q16. Are these provisions appropriate and efficient?

NCH Scotland agrees in principles with Regulations 12 and 13.

We believe it would be helpful if Regulation 14 could clarify how the Regulations will approach the case of a child removed from their parents as a result of the latter’s substance or alcohol misuse, but are then returned where the parental substance or alcohol abuse issues have been resolved.

Part III – Placements

Q18. The Scottish Government propose to accept this recommendation from APRG. Do you have any comments

NCH Scotland supports the adoption of this recommendation. We believe that the pool of potential carers should be as wide as possible, and based on the level of care which the carer(s) can offer to a child.

Q20. Do you agree that, if they are willing, any adults remaining in the household should be assessed with a view to approval as foster carers for the child and that the child should be allowed to continue to live in that household during the approval process?

NCH Scotland believes it is essential that all individuals being considered as carers must be subject to the correct procedures and processes. On that basis we do not believe it appropriate that a child should be placed in a household before the approval process and procedures have been completed.

Q21. Do you agree? Does this provide sufficient protection for the child? The carer? The social worker?

Regulation 18 outlines the action which must be taken in an emergency situation when a child requires to be placed. NCH Scotland is aware that this can be very upsetting and disruptive for the child, and considers it essential that robust safeguards are put in place to protect the child's wellbeing. NCH Scotland, therefore, takes the view that, in addition to this action, an immediate risk assessment should be undertaken to ensure safer care practices can be implemented, and that no potential risk is evident to the child, or to any other children in that placement. These factors should be recorded by the relevant Social Work Department.

Q22. Do you agree? Does this process and timescale provide sufficient safeguards for the child and those responsible for his or her care?

NCH Scotland considers that the review of a placement within 72 hours would be a workable timescale for agencies.

Q23. Do you agree? Does this process and timescale provide sufficient safeguards for the child and those responsible for his or her care?

Yes. We believe, however, that care must be taken to ensure a proper assessment is carried out, and that an emergency placement does not turn into a permanent placement inappropriately

Q24. Do you agree with these proposals?

NCH Scotland takes the view that, where it is recommended a child is to be placed with an individual who is not an approved foster carer, consideration should be given to setting a timescale, e.g. within 4 weeks, for processing that individual's enhanced disclosure, medical and reference checks, while their assessment continues. This assessment should be specific to the needs of the child and, at an early stage, cover areas of training which the carer will need as a matter of urgency to support the placement. This support should be provided while the process of the assessment is ongoing.

Part IV - Panels

Q26. Do you agree with prescribing these numbers in Regulations, or should it be at an agency's discretion?

NCH Scotland believes that the Draft Regulations should prescribe the minimum membership of a fostering panel.

Q27. If you agree, what is a reasonable number of members for a fostering panel, to achieve the balance between each member having sufficient expertise, but not being unduly overloaded? What about for a joint fostering panel, across agencies? Should the number of members be the same?

We take the view that the prescribed minimum membership should be the same for both single and joint fostering panels.

Q28. Do you agree with these provisions? Should there be other provisions, such as the need for panel members to be Disclosure Scotland checked?

NCH Scotland believes that all panel members should have Disclosure checks.

Q29. Is it necessary to have a medical adviser or could this role be covered in some other way e.g. by written reports from the applicants' GPs?

We recommend that the panel should have a medical adviser. The medical adviser would have the expertise and experience to play an important role in understanding both the role of foster carer and any medical issues or concerns relating to the child. The advisers would also be able to liaise with the child's GP, and to develop agreement on key tasks and medical issues relating to the child.

Q30. Should there be a duty on agencies to review the membership of the panel on a regular basis?

NCH Scotland believes that agencies should be required to review membership of the panel on a regular basis, particularly for chairs and vice chairs.

Q31. Is this a reasonable approach? What should the quorum be set at ?

NCH Scotland recommends that the minimum quorum should be 4, i.e. the chair and 3 other panel members.

Q32. Should there be any other provisions made e.g. the meeting cannot be held without the medical adviser/without sufficient secretariat support to

We believe that, if the medical adviser is unavailable for a meeting, their comments should be available for the panel's consideration. NCH Scotland also considers that the recording of the panel's discussion and decisions are essential.

Q33. Do you think anything else needs to be added

NCH Scotland recommends that the functions of the fostering panel should confirm the timescales for reviewing carers on an ongoing basis, and not just the first review post approval.

Q39. Using the draft Schedule 5 as a model, what should such a Schedule contain?

The Schedule should highlight the need for confidentiality within family and social networks. It should also refer to the need for supporting contact arrangements.

Q40. Do you have any views on these provisions? Could they be strengthened in any way?

NCH Scotland recommends that Regulation 28(2)(b) should be included to ensure that the fostering agency, when carrying out a review of a foster carers' approval, should include, where practicable, the views of the child placed and the carers' own birth children who foster.

Part IV – Arrangements with Voluntary Organisations

Q44. Is there anything else that should be listed here? Do the matters in Schedule 6 cover all the issues to be dealt with in an SLA?

We consider that the complaints procedures and their availability to the young people, the organisation's staffing levels, and its staff's qualifications to deliver the service should also be listed. Provisions should also be included relating to intellectual property rights.

There should also be a clear statement of the duties and responsibilities which will be retained by the local authority.

Q45. Do you agree with these reasons and timescales?

NCH Scotland welcomes this provision, which will help to ensure children receive monitoring from the Local Authority. It will also give any children placed with a foster carer outwith the local authority area an opportunity to express their own views on the placement.

Q46. We propose that the final version of the Regulations will contain similar provisions for children placed in a residential care home outwith their local authority area, except that they should be visited every 3 months. Do you agree? If not, please specify your proposed alternative.

NCH Scotland takes the view that children placed in residential units outwith their local authority area should be visited monthly and not every 3 months as currently proposed

Q47. Are there any other ways we can ensure that a child's 'home' local authority continues to be involved when the child is placed outwith the area?

We believe that consideration should be given by the placing local authority to ensure that the child has access to an independent advocate. NCH Scotland believes that the independent advocate could support the child to ensure that the latter's views are taken into account in the planning and provision of their care.

Part VI - Records

Q48. Is there anything else that should be recorded?

NCH Scotland recommends that, where relevant, a child's record should include details of any optical care, and of the child's psychological or psychiatric needs or emotional wellbeing. We suggest that the links to pathways planning should also be clearly referenced.

Q49. Do you feel that adherence to the Code of Practice on records management should be required through guidance?

Yes.

Q50. Is there anything else that should be recorded?

We suggest that the case records for carers should include details of any complaints and/or allegations made against a carer. NCH Scotland recommends that these records should also confirm which checks have been undertaken, and the dates upon which they were completed, as well as details of any unannounced visits.

Q51. Should there be a similar record for kinship carers?

Yes.

Q52 Do you agree that this should happen?

NCH Scotland agrees that the fostering agency should compile a record on each prospective carer who is not approved.

Q53. Regulations 35(1) and (2) replicate existing provisions with regard to retention of records. We are considering whether these should be updated. In your view, what should the retention period be and why?


NCH Scotland considers that foster carer records relating to a child in placement should be kept until the 75th birthday of the child, or if the child dies before the age of 18, for 25 years after his or her death, in the same way as applies to the main recording for the child. We believe that foster carer records relating to the carer should be kept for a much longer period in order to assist with any abuse investigations or enquiries.

Q54. Do you have any comments?

No.

Please do not hesitate to contact either Ann Darlington, NCH Scotland's Assistant Director on 01463-729405, or Lesley Moodie, NCH Scotland's Assistant Director, on 0141-550-9010 if you require more information, or would like to discuss this matter further.

Yours sincerely

A handwritten signature in black ink that reads "Andrew S. Girvan". The signature is written in a cursive style with a long horizontal flourish at the end of the name.

Andrew S. Girvan

Director of Children's Services