



Association of **Lawyers for Children**

Promoting justice for children and young people

Changes to statutory guidance: Working Together to Safeguard Children; and new regulations

**Consultation paper, dated 25.10.17
This response dated 29.12.17**

Response of the Association of Lawyers for Children

**Contact:
Ms Natalia Dawkins
ALC Operations and Development Officer
PO Box 283
East Molesey, KT8 0WH
Telephone: 020 8224 7071
Email: admin@alc.org.u**

Details: The Association of Lawyers for Children (hereafter „ALC”) is a national association of lawyers working in the field of children law. It has over 1,000 members, mainly solicitors and family law barristers who represent children, parents and other adult parties, or local authorities. Other legal practitioners and academics are also members. Its Executive Committee members are drawn from a wide range of experienced practitioners practising in different areas of the country. Several leading members are specialists with over 20 years experience in children law, including local government legal services. Many have written books and articles and lectured about aspects of children’s law, and hold judicial office. The ALC exists to promote access to justice for children and young people within the legal system in England and Wales in the following ways:

- i. lobbying in favour of establishing properly funded legal mechanisms to enable all children and young people to have access to justice;
- ii. lobbying against the diminution of such mechanisms;
- iii. providing high quality legal training, focusing on the needs of lawyers and non-lawyers concerned with cases relating to the rights, welfare, health and development of children;
- iv. providing a forum for the exchange of information and views on the development of the law in relation to children and young people;
- v. being a reference point for members of the profession, governmental organisations and pressure groups interested in children law and practice; and
- vi. funding or co-funding research where we perceive gaps in knowledge or evidence relating to changes in policy and practice in children proceedings.

The ALC is a stakeholder in respect of all government consultations pertaining to law and practice in the field of children law, and welcomes this opportunity to provide its views in respect of the fostering system in England and Wales.

The ALC welcomes this opportunity to comment on the proposed changes to the *Working Together* guidance. Our members mostly work in the family justice system rather than the multi-agency safeguarding system, but our membership includes lawyers who work, or have worked, for local authorities and have experience of working with Local Safeguarding Children Boards. It is therefore appropriate for us

to contribute to this consultation – where specific questions fall outside our expertise, we make this clear below.

Responses to specific questions

Question 1. *As set out in paragraph 4-7 of Chapter 3 of the draft ‘Working Together to Safeguard Children’ 2018 it will be the responsibility of the safeguarding partners’ representatives to determine how they work together in respect of their arrangements. All three partners have equal and joint responsibility for local safeguarding arrangements, and each safeguarding partner will appoint their own representative. We do not propose to set out in statutory guidance who these representatives should be, as it is a matter for safeguarding partners. Do you agree with this approach? If not, please explain why.*

We agree that it is important to ensure that the three agencies most involved in safeguarding are held jointly responsible for local safeguarding arrangements. We are however concerned that the proposed approach, whereby there is no clear overall leadership, carries with it the danger that none of the agencies will take an effective lead. In the experience of our members, effective local safeguarding arrangements are found in areas where there is strong leadership, frequently from the independent LSCB and/or from senior managers within the local authority. It is not enough to say (in para 6) that a lead should be identified “*In situations that require a clear, single point of leadership*” – such leadership is also required in relation to the safeguarding arrangements as a whole.

As lawyers in the family justice system, we most often see cases involving intrafamilial abuse and neglect. This was traditionally the core business of the Area Child Protection Committees. We accept that it was right, when LSCB’s were created, to expand their remit to include wider issues such as radicalisation and child sexual exploitation, but we are concerned that the ever-evolving political agenda will increase the focus on these issues and intrafamilial abuse may become marginalised. This is more likely to happen if there is no clear overall leadership of the type that is currently provided by the independent LSCB chairs.

In relation to the choice of agency partner representatives, we accept that it may well be better to allow each partner organisation to identify its own representative. It is not always helpful to require the most senior managers to act as representatives,

where there may be an individual lower down in the organisation who has greater expertise and motivation to drive the safeguarding agenda. It is nonetheless important for representatives, wherever they may sit within the organisation, to have immediate direct access to the most senior individuals in the organisation in relation to safeguarding matters and the guidance should provide for this.

Question 2. *Safeguarding partners can choose specific agencies which they believe to be relevant to the work of safeguarding and promoting the welfare of children in their area. The Local Safeguarding Partner (Relevant Agencies) (England) Regulations details the specific agencies which safeguarding partners can choose from (a draft is provided at Annex A of this document). It is important to note that certain key agencies are not listed as their functions are commissioned or otherwise overseen by one or more of the safeguarding partners - for example, general practitioners (GPs) come under NHS England and housing comes under the local authority. Do you agree with this indicative list? If not, please explain why and if you believe any agencies should be added or removed.*

We broadly agree with the list, with the following comments:

- Some areas have a significant presence of service families. In those areas, the role of the service authorities and welfare organisations is an important aspect of safeguarding. They should therefore be included in the list. This should extend to include the equivalent agencies in relation to visiting forces, where these have a significant presence within the area;
- The British Transport Police is included in the list but the Ministry of Defence Police, whose remit includes policing civilians within the MoD estate, is not. While the MoD police will engage with civilians to a lesser extent than the BTP, they should be considered for inclusion;
- The NSPCC should get its own mention, in light of its continuing statutory role in safeguarding, and not be left to be picked up as part of the voluntary/charitable categories;
- Some areas are home to agencies that provide services such as school exchange and holiday schemes that legally amount to private fostering. These are different from the “Independent Fostering Agencies” already included in the list and need to be list separately. This is especially important

given the continuing challenge for local authorities of securing compliance with the legislation.

We note that it is left to the three safeguarding partners to identify which agencies should be involved. The Guidance should encourage partners to take a broad view of which relevant agencies should be involved. For example, a small voluntary organisation may have only a limited role in safeguarding when compared with larger agencies, but may contain individuals who have in-depth expertise that will help the partners in their work.

Question 3. *All schools (including maintained schools, special schools, independent schools, academies and free schools) have duties in relation to safeguarding children and promoting their welfare. As set out in paragraphs 18-19 of Chapter 3 of the draft 'Working Together to Safeguard Children' 2018 we expect all local safeguarding arrangements to contain explicit reference to how the safeguarding partners plan to involve, and give a voice to, all schools and academies in their work. Do you agree that this expectation should be stipulated in statutory guidance? Please explain your answer.*

We agree. Schools play a central role in the safeguarding process, if only because school staff have contact with individual children more frequently than any other agency. It is particularly important to ensure that partners consider all of the increasingly-diverse forms of school when making arrangements.

Question 4. *The safeguarding partners must include arrangements for scrutiny by an independent person of the effectiveness of safeguarding arrangements, and how best to implement a robust system of independent scrutiny will be a local decision. Paragraph 20 of Chapter 3 of the draft 'Working Together to Safeguard Children' 2018 states that safeguarding partners should involve a person or persons who are independent, for example by virtue of being from outside the local area or having no prior involvement with local agencies. Do you agree with this? If not, please explain why.*

We agree that there is a need for independent scrutiny, but greater thought needs to be given to the qualities required of the scrutineer. We agree that they should not have had prior involvement with local agencies, but do not agree that living inside or outside the area is so important. In fact, local knowledge may be positively

advantageous. They should however not be related to an elected member (or equivalent of any of the partners), nor to an officer who is employed by a partner agency in a role that is relevant to its safeguarding functions. There should also be a requirement for the person(s) to be 'suitably qualified' (which could be broadly interpreted, but should include ensuring that the person will have the skills and experience to be able to hold senior managers and elected members to account)..

Question 5. *Paragraph 24 of Chapter 3 of the draft 'Working Together to Safeguard Children' 2018 makes it clear that safeguarding partners should agree the level of funding secured from each partner, and from each relevant agency, to support the new safeguarding arrangements. Decisions on funding are for local determination, but contributions should be equitable and proportionate to meet local needs. Do you agree that this is the right approach? If not, please explain why.*

This is outside our area of expertise.

Question 6. *Safeguarding partners must publish a report at least once in every 12 months, setting out what they, and their relevant agencies, have done as a result of the arrangements, and how effective the arrangements have been. These reports will be a key element of local accountability and self-assessment. At paragraph 29 of Chapter 3 of the draft 'Working Together to Safeguard Children' 2018 we have set out a non-exhaustive list of parameters for these reports in guidance, to ensure a nationally consistent set of useful and high quality publications. Do you agree with this approach? If not, please explain why.*

We agree

Question 7. *The safeguarding partners should consider carefully how multi-agency safeguarding arrangements will work in their area. This includes determining how best to ensure that clear criteria for taking action are made available to relevant agencies and others in a transparent, accessible and well-understood way. Currently, Local Children Safeguarding Boards are required to produce a threshold document. We are not proposing to specify in statutory guidance how, and in what format, the safeguarding partners should make their criteria for action available. Do you agree with this approach? If not, please explain why.*

We do not agree that this should be left to safeguarding partners. The threshold document is mainly used by other agencies, but service users and other members of the public need to know what criteria will be applied in each case. In some cases, parents may need to take legal advice with a view to challenging decisions made under these criteria. It is therefore important that the thresholds being applied are readily available and are presented in a way that is consistent between geographical areas. It may be appropriate to modify the current requirements if they are seen as onerous, but it is not appropriate simply to leave it to partners to decide how this important material is made available.

Question 8. *Paragraphs 15-17 of Chapter 4 of the draft 'Working Together to Safeguard Children' 2018 set out the actions the safeguarding partners should take on receipt of a notification of a child safeguarding incident, and the relationship between the safeguarding partners and Panel from then on. Do you agree with the procedure as set out? If not, please explain why.*

We agree with the process set out, but as an additional safeguard we suggest that the findings referred to in para 16 should be sent to the independent scrutineer (see Ch 3, para 20), so that they can decide whether to become more closely involved in scrutiny of the process. Your question related to paras 15-17 only, but the same point could be made about the initial notifications prescribed in para 12.

Question 9. *The Act makes clear that the Panel or safeguarding partners have responsibility to determine whether a review is appropriate, on the basis of 'whether the review may identify improvements which should be made'. However, regulations may require the Panel and safeguarding partners to take certain matters into account when taking the decision, and guidance may support this. Regulation 4 sets out national review criteria which the Panel would be required to take into account when deciding whether to commission a national review. Regulation 18 sets out local review criteria which safeguarding partners would be required to take into account when deciding whether to commission a local review. Paragraphs 20 and 37 of Chapter 4 of the draft 'Working Together to Safeguard Children' 2018 set out additional circumstances for consideration. Do you agree with these criteria and circumstances? If not, please explain why.*

We broadly agree with the criteria, subject to the following comments:

- We understand why the Panel would be particularly concerned about children in institutional settings, but there are many other vulnerable children who are living away from home in other settings, for example in foster care, boarding school, pre-adoptive placements or private fostering and who may be just as vulnerable as children who happen to be in children's homes at the point when they die or are seriously harmed. This should be reflected in the review criteria;
- The courts have expressed a high level of concern about cases where the local authority has failed to bring the child's circumstances before the court, either at all or in a timely way, in the form of care proceedings. In some cases, judges have found that this amounts to a breach of the child's human rights and have ordered local authorities to pay damages. In many cases, other agencies have also expressed concern about the fact that care proceedings have not been commenced. This could usefully be added to the list of factors in paragraph 20:
 - Where family court proceedings have not been commenced and this gives the safeguarding partners cause for concern.
- In the definition of "Institutional Settings" in the Regulations and at para 19 of the Guidance, there is reference to detention under the Mental Health Act 1983 and the Mental Capacity Act 2005. Some children do not qualify to be detained under either of these regimes and are instead detained under the authority of the High Court exercising its inherent jurisdiction. They should be included in the definition.
- In paragraph 37, we think that the second point should be extended to include children who are seriously harmed or die shortly after being returned home from local authority care. Research has shown that reunification carried greater risk than any other form of permanence. If a child dies or is seriously harmed shortly after being returned home, it is likely that there will be lessons to learn in order not only to prevent future deaths/harm, but also to reduce the risk of repeated re-admissions to care.

Question 10. *Paragraphs 23-24 and 41-42 of Chapter 4 of the draft 'Working Together to Safeguard Children' 2018 set out the factors which the safeguarding*

partners and the Panel respectively should consider when commissioning reviewers for local and national reviews. Do you agree with these factors? If not, please explain why.

We agree. In relation to the power to remove reviewers, while we do not suggest that partners may seek to change a reviewer for improper reasons, it may help to avoid speculation if, when removing a reviewer during the course of a review, partners are required to provide reasons for doing so and to communicate these to the Panel.

Question 11. *Paragraphs 25-28 and 43-46 of Chapter 4 of the draft 'Working Together to Safeguard Children' 2018 set out the procedures which the safeguarding partners and the Panel respectively should follow when supervising local and national reviews. Regulations 12-14 add requirements regarding the Panel's supervisory powers. We do not propose to include further details in the regulations relating to procedures. Do you agree with these procedures? If not, please explain why.*

We broadly agree with the procedures. We are pleased to see the reference to understanding practice from the viewpoint of those involved at the time, rather than relying on hindsight. We think that this will help to make the process less intimidating for participants.

We think that the two references to “handles information securely” should instead refer to “handles information in accordance with the relevant data protection legislation”. The Data Protection Act sets out eight principles, of which only one (the seventh) refers to security. The reviewer should be required to comply with all eight (although the Eighth Principle¹ is unlikely to apply in practice). Consideration should also be given to the General Data Protection Regulation (which will apply from 25 May 2018).

Question 12. *Paragraphs 30-33 and 48-52 of Chapter 4 of the draft 'Working Together to Safeguard Children' 2018 set out the expectations for the final report which the safeguarding partners and the Panel respectively need to follow. These paragraphs also cover timescales for publication and arrangements for submitting*

¹ Procedures for transfer of data outside the European Economic Area.

final reports. Do you agree with these expectations and timescales? If not, please explain why.

We broadly agree, with the following comments:

- Partners/the Panel should, where appropriate, consult the family before deciding on publication – a document which appears to be sufficiently anonymised may in fact contain enough information for a person with local knowledge to piece together the child’s identity;
- We think that there may be a drafting error in paragraph 32, which differs from the equivalent part of the Regulations. As the Guidance is currently drafted, the partners are required to send the report either:
 - No later than 7 working days before publication; or
 - No *earlier* than 7 working days after completion.

We wonder whether the second of these should be no *later* than 7 working days after completion? On the present wording, if partners decided not to publish, there would be no deadline for submitting the report

- In paragraph 51, we acknowledge that national reviews are likely to be more complex than local reviews, but this does not mean that they will always take the full six months. It should be made clear that, where it is possible to complete a report in less than six months, this should happen.

Question 13. *The Act allows the Secretary of State to make regulations to set up a list of reviewers, from which safeguarding partners could be required to select reviewers for local reviews. To maintain maximum flexibility in the system, we do not propose to set up such a statutory list at this time. Do you agree with this approach? If not, please explain why.*

This is outside our area of expertise.

Question 14. *Do you have any comments on the content of the regulations at Annex B which you have not already covered above? If so, please provide details below.*

All of our comments are covered above.

Questions 15 - 24. Our members are generally not involved in the child death review process, so these questions are outside our area of expertise.

Transitional arrangements

Question 25 – 27. These questions relate to the detailed transitional arrangements and are outside our area of expertise.