



# Association of **Lawyers for Children**

Promoting justice for children and young people

**Consultation response:**

**Keeping Children Safe In Education**

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**Response of the Association of Lawyers for Children**

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**The Association of Lawyers for Children** (hereafter “ALC”) is a national association of lawyers working in the field of children law. It has over 1,300 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 from both sides of the legal profession 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 law and hold judicial office. The ALC exists to promote access to and equality of 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. campaigning and advocating on against any form of discrimination which may affect children within the family justice system
- iv. 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.
- v. providing a forum for the exchange of information and views on the development of the law in relation to children and young people.
- vi. being a reference point for members of the profession, governmental organisations and pressure groups interested in children law and practice; and
- vii. 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 this consultation.

## **Introduction**

The Association of Lawyers for Children (ALC) is grateful for the opportunity to respond to this consultation. The ALC recognises that the Consultation is aimed primarily at those working in Education. However, our members represent children and frequently act in cases concerning allegations made in schools. Difficulties have been encountered in numerous cases due to the way in which schools have recorded and responded to allegations made by children. These issues are well known to child protection lawyers but not to those working in education. They are not addressed sufficiently in the revised draft guidance. Accordingly, we make some general observations with a view to improving the reliability of accounts taken from children, thereby ensuring that the child's voice is heard accurately and improving outcomes for young people.

## **Question 57-8**

Yes, we support the requirement for schools to implement robust cover arrangements to ensure safeguarding concerns are addressed promptly when the DSL is unavailable. Further, we endorse the expectation that DSLs and their deputies / cover should have the skills and experience to carry out their responsibilities effectively. Our members have experience of DSLs being appointed who are not qualified teachers. In such cases, there is a need for robust training to ensure that the DSL has the requisite expertise to carry out their responsibilities. It is our members' experience that there is a lack of training in school settings for taking accounts of abusive experiences from children and training requires to be updated regularly and the DSLs well supported by the school management to perform their tasks effectively.

## **Question 61**

Yes, KCSIE should provide clearer guidance to teaching professionals about receiving and recording children's allegations. There should be particular scrutiny and application of the Ten Cardinal Principles set out by Mr Justice MacDonald in the case of **Re P** [\[2019\] EWFC 27](#). In particular, teachers should be mindful of (i) the need for planning when speaking to children rather than precipitate action; (ii) that all interactions with a child who is making or appears to be making an allegation has the potential to influence that child's memory; (iii) accounts given by children are susceptible to influence as the result of bias or preconceived ideas on the part of professionals; (iv) questioning should ordinarily be left for the formal ABE interview; (v) anything the child says must be recorded in a note with clear detail including the words used by the child and the questions asked; and (vi) the need for a methodology that combines taking the child seriously with an open minded approach.

As safe adults, teachers and school staff are commonly the first to receive and record allegations of child abuse, which are then investigated by the police or children's services and can become the focus of court proceedings. Those first accounts by children are an essential part of the evidence. Where allegations are contested, there may be particular scrutiny within Family Court cases as to contents and circumstances of that first report. The hearsay evidence of that

professional may be a crucial feature in a case. It is essential, therefore, that an allegation is received, recorded and relayed reliably and in a manner that preserves its evidential integrity. Where an allegation is polluted by poor practice, the evidence may be determined to be unreliable, such that findings are not made and the child or young person is not adequately safeguarded. The consequences of the failure to follow good practice has been raised by the Family Court in multiple cases. Notwithstanding the clear guidance from the High Court in **Re P** in 2019, issues continue to arise. In the recent case of **LM and MM [2023] EWFC 112**, the court was concerned with allegations between siblings, which were undermined by the school's lack of forensic rigour and flagrant departure from good practice.

As children lawyers, we recognise the vital role played by teachers. Their primary function is education and their training is focused accordingly. We are concerned, however, that safeguarding training and, in particular, the express guidance in KCSIE, must equip education professionals to take an accurate and reliable record.

Paragraphs 545-8 of the draft KCSIE give guidance for the 'immediate response' teachers should provide upon receiving a report of harmful sexual behaviour, sexual harassment and/or sexual violence. This guidance is not fully in keeping with the Achieving Best Evidence guidance. The ABE guidance, which provides *a yardstick of good practice against which the reliability of the information obtained may fairly be measured* is not mentioned at all in KCSIE. We recommend that, at a minimum, school staff are referred to the ABE guidance and that the key tenets of the same are included in KCSIE. There should be an expectation that DSLs and frontline staff are familiar with part 3 of the ABE guidance. As Mr Justice MacDonald opined in **Re P**, professionals working with children *need to be trained in, and to apply diligently the existing long-established and readily available comprehensive guidance*.

Language is important. We note, with concern, that the guidance continues to use the word 'disclosure' to describe allegations made by children against non-staff. When, however, the allegation is against school personnel, KCSIE uses the word allegation. Terminology matters. The word '*allegation*' is imbued with an inherent uncertainty – it supposes an open mind - while '*disclosure*' implies that what is said is true. It is this very implication which caused the term '*disclosure*' to be so emphatically deprecated in the Cleveland Report, 1988. It is regrettable that almost 40 years after Cleveland, KCSIE continues to use the word disclosure. This is supported by a culture of belief employed by schools. While of course children should not be disbelieved, it is vital that those receiving reports maintain objectivity and an open mind, not least as it is often unclear what a child is seeking to communicate and the reaction or bias of the recipient of a report may influence what the child goes on to say.

We recommend that the following key points are set out clearly in KCSIE:

- (1) Record keeping is essential; it must be accurate and (near) contemporaneous. Wherever possible, notes should be taken at the time. The note must include the actual questions asked

and the actual words used by the child, not the adult's summary or interpretation of what the child said. The guidance must stress the importance of recording accurately the words used to describe body parts, the tense used (which would denote historic or ongoing abuse) and the significance of prepositions (on or in, for example). The note that must include the timing, setting and people present, anything said by the people present, and a description of the child's affect.

- (2) The DSL (or other staff member) following up on a spontaneous initial allegation should keep an open mind. They must avoid asking a child to repeat what they told the first member of staff. A free narrative is essential. The DSL should be mindful of the child's characteristics, including their age, cognition, linguistic ability, cultural background, any special needs and experiences. Questioning, if necessary at all, must be limited to eliciting a brief account of what is alleged to have taken place utilising only open questions. Accurate and contemporaneous records of things said by the child and any questions asked is essential to effective safeguarding. Questioning should be undertaken only by those trained and within the ABE process. All teachers should have basic training in this process as it is not always possible to bring in a DSL when an initial account is given spontaneously by a child to a trusted teacher.