



# Association of **Lawyers for Children**

Promoting justice for children and young people

**Consultation response: Recommendations to achieve best practice in the child protection and family justice systems: Supervision orders (October 2022), Working Group chaired by The Honourable Mr Justice Keehan.**

**This response dated 30.11.2022**

## **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 close to 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 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**

It is noted that the working group has requested comments on the interim report, but specifically those on the seven consultation questions posed.

The ALC welcomes the opportunity to respond to this consultation and shares some of the concerns raised in respect of the current framework and practice. This response takes each question in turn, and together where appropriate.

- i. **Should supervision orders be retained as a public law order?**
- ii. **Should supervision orders be reformed to be a more robust and effective public law order?**

The ALC is of the view that supervision orders should be retained as a public law order, and the ALC is firmly of the view that these must be reformed to ensure that they are a robust and effective order.

Retention is important as the care order is a very intrusive order for a child. The concept of local authority supervision for a period of time is a very good one. It has not succeeded as the orders are under resourced and there is limited follow through with the parents or oversight by the by local authorities. Supervision orders have limited effect in terms of the support package that can be secured for a child. There is a mismatch across local authority areas as to whether the child has an allocated social worker throughout the life of the order. Moreover there is a necessity to require local authorities to complete statutory visits to children under these orders as it is our members experience that such child become inviable to statutory services. The tightening up of the conditions to a SO would be valuable to children and ensuing that there are real consequences for breach of conditions.

- iii. **Are the recommendations for immediate reform in this interim report sufficient to achieve the goal of making supervision orders more robust and effective?**

The ALC has considered the recommendations made for immediate reform and considers that these are sufficient in the short term. It is noted that there is a recommendation that the Government commits to providing the necessary resources to local authorities to enable them to adopt and implement the BPG. This is considered a vital part of these proposals, as it is widely acknowledged that local authorities are under significant financial pressure, and without this the reforms are unlikely to be implemented in full on a consistent basis.

- iv. **If not, what other reforms or measures should we recommend?**

That said local authorities ought to devise a scheme of services that support families under SOs as they have with SGOs including therapeutic support services. Resourcing is a governmental responsibility.

We propose that the requirement for a support plan ought to mirror that with SGOs and be placed on a statutory footing. The court should not make the order without the plan before it. As with SGO's the plan should be circulate in draft to the parents and guardian and agreed insofar as is possible before the order is made.

The ALC advises that there should be a legal help scheme similar to the PLO scheme in place from the half way point in any order. We explain why below.

- v. **Are the reforms and measures set out in the BPG (p 73 onwards) proportionate and practical or are they, or any of them, overly burdensome to implement for parents/carers, the Family Court, children's services or others involved in the child protection and family justice systems? If so, how could they be improved?**

The reforms and measures set out in the BPG appear to the ALC to be proportionate and practical, albeit there is concern about point 4. **Resource clarity.** It is noted that a supervision plan is proposed to include confirmation of which specific resource is being, and by whom. The 28 days provided to draft a supervision plan, if this is proposed by the court, in the most straightforward of cases where support is only being provided by the local authority should be a realistic timeframe. However, it would appear to be ambitious if funding confirmation is to be secured from a resource outside of the relevant local authority. Many supervision orders are prompted by concerns regarding lack of support, however some of the required support services are outside of the control of the local authority including housing, therapeutic input for parents and children and contact centres. Service level agreements may be required to create a package of standard services for SOs as with SGOs but this would have to be centrally resourced. In cases where there are health and third party agencies required to support the family it is difficult to coordinate. The absence of a status of a looked after child means that the child under an SO does not necessarily get priority with such services. . It is incumbent upon the local authority to coordinate the services around the child and draw up the plan. Local authorities ought to plan and devise a programme of services that will support families under these orders as they have for SGOs. We submit that these requirements should be placed on a statutory footing.

The ALC also considers that there must be a transition plan setting out how the reforms will be shared with all practitioners and experts (eg ISWs) who might be considering options for a family. FJBs and performance groups will play a key part in information sharing and training to try and ensure some consistency of practice. It is also proposed that local authority working groups review how these plans are working and being utilised, including consideration of the type of cases they are being used for and what is being included in them at the performance meetings in each DFJ area. This should be a standing item and reviewed on a quarterly basis for at least the first 12 months of their being in force.

The ALC agrees that the considerations which were discounted by the group were correctly excluded. The ALC does not believe that there should continue to be court involvement following the making of the final supervision order, and that the correct review mechanism is as per this group's recommendations.

The ALC is concerned that there does not appear to be any specific recommendation as to a parent seeking legal advice post final order, where a supervision plan is in place. If a local authority chooses to amend a plan unilaterally there is provision for this in the BPG, however does a parent have the ability to request such an amendment and, if so, how and who should they contact? In addition to this point, it is the view of the ALC that the complaints procedure should be included in a supervision plan in the event that a review is not arranged or effective (most likely in the event of a change in social worker). There is unlikely to be legally aided advice available for this, certainly the non-means, non-merits, tested legal aid will end on the making of the final order, and legal aid for the variation of or extension of a supervision order is means and merits tested. The ALC advises that there should be a legal help scheme similar to the pre-proceedings scheme in place from the half way point in any order.

The ALC considers that there should be a requirement to consider whether the local authority should refer the child for the allocation of an advocate during the order for the child's voice to be represented in the reviews as to whether the order is working and should be extended.

vi. **Should guidance be issued by the DfE / Welsh Government to underpin the BPG set out in this report to help ensure consistency of support and oversight?**

Yes there should be comprehensive guidance similar to the SGO statutory guidance. This should be on a statutory footing. This way the child and family have a clear framework to hold professionals to and professionals have clear obligations upon them.

- vii. **Should there be future legal and practice reforms so that supervision orders are (a) supported under a specific supervision order review pathway provided for in relevant primary and secondary legislation, (b) underpinned, supported and reviewed via the child-in-need framework in England, the care and support plan framework in Wales, or (c) underpinned, supported and reviewed through the child protection framework including through child protection plans?**

The ALC has made a proposal above that the local DFJ areas review the use of supervision orders in performance meetings with their local authorities, and that communication between them can try and ensure consistency of use and evolving best practice across the country. The local FJBs would also have an invaluable role in this in gathering the views of the parents' and children's lawyers. Cafcass would continue to provide views via their local leads in each area.

We strongly support a specific supervision order review pathway provided for in relevant primary and secondary legislation, likewise that the reforms should be underpinned, supported and reviewed through the child protection framework including through child protection plans. This is the necessary level of seriousness for children who have just been through care proceedings and being placed in a setting where harm may still be occasioned. The CP process is far better suited to the management of risk on the ground and in particular in a home. this process gives an oversight by the CP chair who is not in direct line management with the social work team. This adds a layer of scrutiny and protection for the child.

We do not support the reforms being underpinned, supported and reviewed via the child-in-need framework in England, the care and support plan framework in Wales. This is not sufficiently robust, is not always social work and local authority led.

**-End-**