



Association of **Lawyers for Children**

Promoting justice for children and young people

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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.

Comments and response to the Family Justice Council's draft guidance entitled ' Covert Recordings in Family Law Proceedings Concerning Children'

The ALC welcomes the FCJ's draft document in respect of this this difficult and increasingly common issue within children law proceedings. The analysis of applicable law and practical issues arising from recordings is thorough, and the guidance and recommendations provided are practical, workable and will doubtless be of great assistance to practitioners and agencies.

The ALC makes the following comments for consideration by the FJC:

- At paragraph 1.5 – we suggest that before or within this paragraph there could be a clear expression that covert recording of children, parents and professionals by private individuals in child welfare cases is firmly discouraged: it rarely promotes a child's welfare. An expression in these terms would seem to be entirely in keeping with the content that follows and would serve as an early marker of the harm that can be caused directly and indirectly to children when covert recordings feature in proceedings.

- Section 3/reference to UN Convention on Rights of the Child – There is no reference in the document to the UNCRC which pursuant to Article 2 expects of courts and state agencies actions in the child’s best interests. Article 16 protects a child from lawful and unlawful interference of her privacy or honour or reputation – we consider that these points ought to find expression in the document. The FJC guidance itself serves to promote safeguards against violations of article 16.

Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks.

- Section 5.5/representation of children - The ALC submits that recording of the child is a matter directly engaging the child’s Article 8 rights and welfare issues about what, if anything, they should be told. The recording of a child is highly likely to need to lead to the party status of a child and the representation of the child by a lawyer, if not already in place. Where the recording is between parents of a child then party status of the child will be of considerable value to the questions of admissibility to ensure that there are submissions anchored in the overall welfare issues for the children placed before the court.
- Paragraph 6.11, footnote 31 – This at present links to the 2011 ABE guidance and not the January 2022 guidance.
- Section 7/welfare implications in respect of publication - Aside from a reference to potential harmful consequences to a child section 7 is heavily legal focussed and does not make reference to the wide and significant impact on the child’s welfare of posting covert recording of a child on social media or distributing them. Welfare language in addition to that currently included in section 7 would improve the accuracy of the document.

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Subject to the FJC's kind consideration of the preceding comments and any amendments it may make to address them, the Executive Committee of the ALC is pleased to approve and endorse the draft guidance on behalf of its membership.

12 December 2022