

IN THE MATTER OF:

**THE STATUTORY FRAMEWORK FOR THE SAFEGUARDING OF  
CHILDREN IN SCHOOL**

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OPINION

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1. I have been asked to give an opinion on the current statutory framework for the safeguarding of children in schools and in particular to consider the statutory requirements for all allegations of child abuse made within schools to be reported to external agencies such as social services, Police, LADO or the Independent Safeguarding Authority.
2. There have been numerous recent developments in safeguarding and child protection and it is important to have an understanding of what the framework actually compels employers and authorities to do, in what circumstances employers and authorities have to exercise discretionary powers and the implications of these requirements on the overall effectiveness of the current safeguarding framework.

**Statutory Framework**

3. All recent provisions flow from the reports following the death of Victoria Climbié, which led to the Every Child Matters agenda, and the Soham murders which led to the Safeguarding agenda.
4. The principle statutory provision for the vetting, referring and barring of employees working with children is now the **Safeguarding Vulnerable Groups Act 2006 (SVGA 2006)** which is being rolled into effect over the next couple of years (the timetable has been extended recently). The procedures set out within SVGA 2006 replace all existing statutory procedures and duties with respect to vetting referrals and barring of employees who work with children.
5. Of particular interest in respect of Schools are the duties requiring employers to report employees to the **Independent Safeguarding Authority (ISA)**, set up under the **SVGA 2006**. Where an employee such as a teacher or teaching assistant has direct access to children the employer or service provider must refer information to the ISA when they have dismissed an individual or an individual resigns because they harmed or may have harmed a child (ISA Fact Sheet).

6. The difficulty is that determining whether the employee actually harmed or may have harmed a child requires investigation procedures to be in place and people in place who will make decisions about whether or not an individual should be referred to ISA. There is clearly no requirement to report all allegations or all concerns. The duty is to consider the nature of the allegation or concern raised and the outcome of any investigation, to determine whether the employer believes that harm was caused or may have been caused to a child.
7. Important questions surround matters such as: who makes the decision on reporting; and what guidance there is to help employers make those decisions.
8. In the past week the issue has been raised that the ISA procedures will raise the prospect of teachers being damned by rumours and having their careers destroyed when no charges have been made and no finding of guilt has been made. How do we protect both the children and the employees with such procedures which allow for potentially wide and varying discretion?
9. **The Children Act 2004** established a statutory duty for all agencies (e.g. Education, Social Services, NHS, Police, Youth teams) working with children to safeguard and promote the welfare of children (s11). The Statutory guidance issued in respect of this statutory duty is called “**the Statutory Guidance on Making arrangements to Safeguard and promote the welfare of children under s11 of the Children Act 2004**” (issued in 2007) (“the Guidance”).
10. The Guidance defines the statutory duty as including:
  - Protecting children from maltreatmentwhich in turn includes:
  - Protecting physical and mental and emotional well being
  - Protection from harm and neglect
11. The Guidance states that all agencies should have a clear statement of their responsibilities towards children and these should be available to all staff. There should be a named person responsible for safeguarding and promotion of children’s welfare and clear lines of accountability. Staff recruitment and vetting procedures should be robust and should follow legislation. There should be effective inter-agency communication and working together. There should be agreed systems, standards and protocols for sharing information between agencies.
12. However this Guidance does not have the weight statutory duty as it merely requires that all heads of agencies working with Children have regard to the guidance. Courts have held that this means that agencies and local authorities should follow the guidance unless they have good reason not to. The Guidance

- explicitly states for instance that the decision to share or not to share information should always be based on professional judgement. Examples of best practice are given but this does not mean such examples will be followed.
13. As we have seen from the recent Haringey Cases, where one child was murdered and another was raped by the same man, even whilst they were under the close care of social services, it is clear that social service managers and executives failed to follow the Guidance and failed to safeguard and promote the welfare of these children.
  14. The OFSTED Inspection regime is supposed to monitor these procedures and duties. Of serious concern is the fact that just prior to the death of the child in this case OFSTED had said that Haringey's safeguarding policies and procedures were 'Good'. They have since been found during that time to have been failing children. OFSTED relied entirely on the self assessment forms submitted by social service managers.
  15. **The Children Act 2004** envisages that Agencies safeguarding duties will be monitored by the **Local Safeguarding Children Board (LSCB) (s13 CA 2004)** which should be set up by children's services authorities. The Boards should coordinate and ensure the effectiveness of procedures of all partners in safeguarding and promoting the welfare of children. The LSCB monitoring role should compliment and contribute to the work of the inspectorates. The LSCB's powers are merely to inform any partner agency of any deficits it becomes aware of. This seems to be more concerned with big management to ensure such agencies as the Education Services, Social Services, NHS, Police, Youth teams etc are working together.
  16. The Haringey LSCB has recently reported on the Baby Peter case and has been scathing in its criticism of social services and the NHS agencies and individuals that were directly involved and should have been able to stop the harm to the child. However this report has come years after the failings took place and clearly reflects the failure of the LSCB to ensure that such failing did not take place in the first place. It is very important to recognise that a system that relies upon hindsight to tell it that it is failing, cannot be an effective method for safeguarding children. Something more pro-active aimed at prevention is required.
  17. With specific reference to Education and Schools the Guidance provides that all people working in education and schools contribute to the safeguarding and promoting of children's welfare, by assisting in the early identification of children who may be at risk of harm, educating children about risks and improving their resilience through the curriculum. The creation of a safe environment for children and ensuring that schools are able to manage situations where there are child welfare concerns.

18. All schools should have in-house protocols for dealing with allegations of child abuse or where a child is considered to be at serious risk of harm (as set out in the general section of the Guidance). As set out above this requirement does not have the force of statutory duty and is merely considered best practice. The protocols are normally drawn up by the Governors of the School in consultation with staff, the senior management team and hopefully the local authority. The protocols should cover all forms of concern and allegations. Normally a named person is in charge of dealing with all allegations and expressions of concern. The protocol may include procedures for reporting all concerns to social services and police (where appropriate). However this is not a statutory requirement and some school will have more effective protocols than others depending on the professionalism, experience and competence of the person taking overall responsibility for developing the policies and protocols
19. Another piece of guidance issued by HMG as a result of the s11 Duty to safeguard and promote the welfare of children is a document entitled “**What to do if you’re worried a child is being abused**” issued in 2006. This guidance is aimed at individuals working with children. It is a lengthy document. A helpful **Summary** of the guidance has also been issued which takes us to in-house decision making.
20. The 2006 guidance is again a statement of best practice and includes advice such as:
- *Be familiar with procedures and protocols*
  - *What to do if responsible for making referrals*
  - *Ensuring that a police investigation is not compromised*
  - *Record all concerns, discussions about the child, decision made and reasons for those decisions.*
21. If there is a concern:
- *Discuss concerns with your manager or named designated person*
  - *If still concerned then you may take it further yourself and contact social services for instance.*
22. If you are the manager or designated person you should:
- *Decide the next course of action after a referral has been made to you*
  - *If no further action taken tell referrer of the decision and the reason for making it*
  - *If you think a crime may have been committed you may wish to discuss with the police*
23. The guidance however does not deal with or recognise the situation where a member of staff, a colleague or the designated person may be accused of harming

- a child. There is no recognition of the tangled dynamic and conflicting loyalties this may raise. Some schools will have explicit protocols for this which all staff may know about and which all may follow, others won't. Many issues impact on the decisions people make and the actions they take.
24. Another important issue to consider is the effectiveness of child welfare inspections in state, non maintained and independent schools by OFSTED and the I.S.I (or by any other inspectorate). This is the only statutory machinery whereby the procedures and protocols of a school where child welfare is concerned may be checked independently. The role of inspection of child welfare in schools includes inspections against notifications returned under the statutory obligation of the Education Acts by schools to the DCSF in Darlington until January 2009 and to the Independent Safeguarding Authority (also in Darlington) thereafter. This is the key provision for the securing of effectual child protection in schools and is a requirement of the DCSF for every Inspector of every school. It is especially important that it should both work effectively, and be seen to be working.
25. Upon the formation of the "new OFSTED" regime on the 1<sup>st</sup> April 2007, when the entire CSCI inspection methodology for Independent schools was handed over to OFSTED, an undertaking was given by OFSTED upon the insistence of the Children's Rights Directorate that the inspection procedures and standards of the CSCI would be adhered to by OFSTED. This means that OFSTED Inspection reports should not differ or vary in form or content from those previously furnished by the CSCI. This has however demonstrably not been happening as is all too apparent from even a cursory reading of Inspection Reports published by both OFSTED and ISI since April 2007, notwithstanding continuing protests and very considerable correspondence with these bodies on the subject.
26. This continuing failure of the child welfare inspection and reporting on concerns raised in respect of individual incidents of discipline, behaviour, or school procedures, including safeguarding procedures, is of serious as parents and prospective parents, and school's themselves do not know what has and has not been inspected against and whether the school in question has adequately dealt with the problems experienced and with the matters raised or not. Parents and prospective parents have nothing else available to them upon which to place reliance in making the respective decisions about schools. Whilst Local Authorities are in a slightly better position of potentially having internal information from LADOs and LSCBs they are still disadvantaged without proper and reliable external reports. Further OFSTED and ISI Inspection teams have not been recording how schools are dealing with child abuse allegations and concerns in general and they do not appear to monitor safeguarding protocols to ensure they are sufficiently robust to effectively protect children from harm: at most OFSTED inspectors checks that a safeguarding policy exists and inspect again notifications to Darlington (now the ISA) and this is not explicitly covered in the written report.

27. One other possible avenue for ensuring teachers and employers safeguard and promote the welfare of children consistently is the Professional Body responsible for teaching standards. All teachers are subject to the professional code of conduct as set down by the General Teaching Council (GTC).
28. All qualified teachers and schools that employ qualified teachers must be registered with the GTC. The GTC should ensure that all teacher records are up to date and include whether they are eligible to teach and set out any active disciplinary restrictions and barrings (cross referencing with ISA register, CRB etc) as well as the general service record for the teacher.
29. The GTC has recently issued information for employers of teachers setting out the vetting and barring scheme now being rolled out under the SVGA 2006 via the ISA (**GTC briefing 17**). Before January 2009 employers of teachers had to refer cases of teacher misconduct to the DCSF; these were cases where a teacher was dismissed for misconduct and also where a teacher resigned in circumstances where dismissal was a possibility. The GTC confirms that the ISA is now taking over the role of vetting and barring people from the DCSF. The GTC briefing informs schools that the employers of teachers must refer to the ISA all cases of teacher misconduct that have a child protection element. Other cases of teacher misconduct should continue to be reported directly to the GTC. However this *must refer to the ISA* is in respect of cases where a teacher has been dismissed following an investigation or has resigned before any investigation could be concluded.
30. The GTC briefing sets out the type of misconduct it deals with:
- Inappropriate language and conduct in respect of pupils
  - Action which undermines school or parents
  - Misconduct related to management and administration
  - Fraud and financial impropriety
  - Misrepresentation of qualifications and other matters
  - Misconduct related to contractual matters
31. The current “**Code of Conduct and Practice for Registered Teachers**” issued by the GTC for England in 2004 is to be replaced in September 2009. Currently “*unacceptable professional conduct*” does not include failure to report concerns re child safety or to follow protocols on the safeguarding and promotion of the welfare of children.
32. Whilst the ISA, DCSF and GTC may be developing guidance on all duties in respect of the **SVGA 2006**, to date there is no guidance on how decisions related to allegations and concerns re child safety are to be dealt with on a consistent basis across all schools and local agencies.
33. That leaves only contractual duties set out by schools for individual employees and indeed some may include specific mention of safeguarding duties etc

depending on the post the employee is employed for. There can obviously be no consistency in terms of what is said on safeguarding matters within these contracts.

34. The central point to be aware of is that the effectiveness of the safeguarding framework depends entirely upon the professionalism, experience and integrity of the individuals who have to decide what to do when any concern or allegation is raised and there is nothing in the current statutory framework that compels individuals to make those decisions in a consistently professional manner that can be tested against professional standards.

### **Independent School Review**

35. Those who teach in Independent Schools do not have to be qualified teachers and therefore the GTC guidance does not necessarily apply to them. However the SVGA 2006 framework does and the Independent OFSTED inspection regime monitors the Independent schools in terms of educational quality and the well being and safety of the children, albeit in the limited way set out above.
36. There has recently been a review of safeguarding of children within Independent Schools by Sir Roger Singleton. **The Singleton Report** was issued in March 2009 and has made a number of recommendations to the Government. In his covering letter to the Secretary of State for Children, Schools and Families, Sir Roger Singleton highlighted that he had found evidence of excellent practice throughout the system, however he also found that there was scope of substantial improvement. *“Good Practice is not yet universal practice”* and there was a need to improve procedures and local liaison and to ensure a proper separation of duty to implement safeguarding arrangements from that of monitoring them. He went on to add that whilst his report and recommendations were aimed at the Independent School sector the Secretary of State might wish to consider whether these might be of equal benefit in schools outside the scope of the review.
37. The Singleton Report recommendations included:

- *Streamlining the regulatory framework to reduce the burden and increase the quality of safeguarding within schools*
- *The requirement for arrangements for independent scrutiny and challenge of the school’s safeguarding policies and practices (LSCB approved person for example)*
- *Schools to produce an annual report on safeguarding policies and procedures and how duties were discharged. The report should be signed off by the person exercising independent scrutiny and should cover recruitment, training and the maintenance of a central log of ALL actions taken in pursuit of individual safeguarding concerns raised. This report to be sent to the DCSF*
- *OFSTED inspections should allow sufficient time for the effective inspection of safeguarding policies and practices.*

- *DCSF and ISA to provide sufficient information to OFSTED inspectors to allow the inspection team to review the conduct of the investigation in accordance with the school's own and locally agreed interagency procedures.*
  - *OFSTED reports flag up a school's success of failure to comply with all safeguarding requirements at the beginning of all inspection reports*
38. I have highlighted recommendations that could be applied to all schools and not just independent schools and those that centrally focus on scrutiny of internal school procedures for dealing with all child safety allegations and concerns raised within schools. Clearly Sir Roger Singleton has seen that not all schools have effective procedures in place and that as a result children harmed or at risk of harm may not be being identified and referred to appropriate agencies, and employees or individuals responsible are not being identified and reported. He has concluded that the only way to ensure the effectiveness of protocols is to compel record keeping and monitoring of all decisions related to all allegations and concerns.

### **The Dynamics of Abuse within Institutions**

39. Whilst the focus of this opinion is on the safeguarding of children within schools there have been no major inquiries on the prevalence of child abuse in schools. However within other national institutions more studies and reports have emerged over the last ten years which are illustrative of the complexities that surround issues of child abuse and the decision making that takes place.
40. Within the Anglican and Catholic Churches in England and Wales (and most recently Ireland) where numerous reviews have been undertaken in recent years concerning Child Abuse, a consistent pattern has emerged in the way in which church leaders (line managers) dealt with allegations of child abuse involving ministers and clergy. The Bishop of the relevant diocese who had overall responsibility for the minister would organise the investigation into the allegation. In many cases up to recent times the outcome was invariably to silence the child and family and move the minister to another parish or diocese in order to avoid 'scandal'. The outcome was that a number of prolific child abusers were able to continue abusing children for many years. As disturbing, was the consequence on the child victims who had no access to help and support, were often forced with their families from their church communities and suffered the severe and long term effects of abuse.
41. Those survivors of child abuse who have sought redress from the churches have almost without exception been refused any assistance. The church takes no responsibility for the actions of their ministers unless the survivor can bring a successful prosecution against the abuser and unless they can prove that the Church had knowledge that the minister would or may cause harm to children.

This is often not possible as the minister is either dead or ill or the CPS feels that a fair trial is no longer possible. Insurance companies demand that the Churches make no concession to the survivors because of the cost implications.

42. The ongoing review of historic cases of child abuse within the Anglican Church has revealed numerous cases that were dealt with as set out above. Where dioceses commissioned independent reviewers the local child protection team were asked to consider what they would do about the victims of those cases that had come to light during the review. The resounding response was that this was outside the scope of the review and that dioceses have no duty to assist those victims who were identified through the review process.
43. I mention this dynamic because it illustrates the difficulty faced by friends and colleagues in accepting that an individual could be harming a child, the difficulty of doing the right thing when they find that it may be true, and the wholesale disregard for the victim whilst attempting to cover up the truth to protect the institution and colleague from scandal.
44. Would this go on in schools and other organisations? As has been seen in the cases at Caldicott School, and many other cases concerning child abuse, colleagues try to deny what is happening rather than shatter the illusion of a perfectly run school which cares for its children.
45. In my opinion it is the recognition and acceptance of these dynamics and difficulties will enable the development of adequate policies and procedures with robust statutory duties attached, to better protect, safeguard and promote the welfare of children in our schools.

## **OPINION**

46. I understand that Ed Balls the Secretary of State for Children, Schools and Families has indicated that there are statutory duties to report all cases of child abuse to external agencies. It is true that all instances where a teacher or employee is dismissed for misconduct involving an element of child protection or where an employee resigns before an investigation can take place there is a duty to report these cases to the ISA. However there is no such duty where a teacher remains in the school. Nor is there a duty to investigate all allegations and concerns or to report all allegations and concerns involving child safety and welfare to external agencies.
47. It is clear that all statutory duties concerning barring and vetting of employees and safeguarding and promoting the welfare of children are duties to consider, determine and have regard to guidance when making decisions. How well these duties are carried out and how consistently will depend on the training and professionalism of those whose responsibility it is to make decisions and have

regard to Guidance as issued by HMG, DCSF, GTC and ISA, and how effectively the decision making is monitored. There seems to be no statutory or legal consequences on teachers who fail to follow protocols, or managers who do not have effective policies and/or make wrong decisions in respect of allegations and concerns around child safety and welfare.

48. What is clearly not within the current statutory framework for the safeguarding and promoting of the welfare of children is any statutory duty to report all allegations and concerns of child abuse to external agencies, including the LADO (Local Authority Designated Officer) which means the abused child has no guarantee of being assessed because s/he receives no support from the existence of any statutory framework.. Nor is there any mechanism for ensuring that allegations and concerns are considered appropriately and responded to appropriately, i.e. by means of statutory records or independent scrutiny. Whilst the decision on what to do next when a concern is raised, is left to the unchecked and unscrutinised professional and moral judgement of an individual within the school then the very same dynamics of abuse and collusion that took place at Caldicott School, and was so compelling revealed in the Chosen documentary, could well be repeated in any school now and in the future.

**ANNE LAWRENCE**

**ATLAS CHAMBER**

**16<sup>th</sup> June 2009**

**(Amended 6<sup>th</sup> November 2009)**