

**Response from Wiltshire Council
to the Department for Education's consultation:
'Keeping Children Safe in Education'**

Consultation question 3:

Do you agree that *Keeping Children Safe in Education* guidance should set out the minimum legal and statutory requirements and beyond that give schools and further education colleges autonomy to use their own judgement to decide how to keep children safe?

Response:

No

Comments:

See below

1. Introduction

- 1.1 When sections 157 and 175 of the Education Act 2002 were implemented in 2004 Wiltshire Council created a new Schools Advisor post to support, advise and challenge schools in their safeguarding and child protection work. This response is written by that Advisor on behalf of Wiltshire Council.

2. Context

- 2.1 Updating the current statutory guidance 'Safeguarding Children and Safer Recruitment in Education' (SCSRE) is long overdue as elements of it have for some while been out of date and superseded by other guidance and statute. However, it is our strong view that 'updating' should include not only ensuring compliance with and reference to legislation enacted since SCSRE was implemented but also should acknowledge and offer direction on the increasingly complex safeguarding and child protection situations which school staff 'on the front line' face including:

- child sexual exploitation
- teenage neglect
- supporting 'looked after' pupils
- forced marriage
- sexually harmful behaviour
- self harm
- domestic violence
- anti-bullying

Not to refer to any of these issues in the document represents a missed opportunity.

- 2.2 Our experience of working with SCSRE is that it provides sound, practical guidance which usefully sets out minimum requirements which all schools should have in place. These requirements (set out in SCSRE at 2.18 through 2.22) are neither burdensome nor onerous; they are well understood, and are accepted as a 'baseline' by school leaders and staff. Head teachers and governors alike

value the clarity of knowing what they need to have in place. It is therefore disappointing that many of these clear requirements are not included in the draft guidance.

- 2.3 The main body of the proposed new guidance focuses on vetting and barring checks, which is clearly very important. However, whilst this is clearly an issue that must be covered, the statutory guidance covers this to the exclusion of other equally important practice areas - this is a retrograde step which will neither aid schools in their safeguarding work nor keep children safe.
- 2.4 We understand the Government's drive to reduce bureaucracy and unnecessary prescription. However, our experience has been that providing a set of safeguarding standards and a clear framework for school staff to work within is felt by schools to be supportive rather than burdensome. We also know from our experience that it is one of the factors that drives effective practice in this work by providing a clear base-line for schools.
- 2.5 We disagree with the underlying assumption set out in both the background introductory paper and the draft guidance that *'it is for front-line skilled professionals to use their own knowledge and judgement to safeguard and promote the welfare of children in their care...'* Adults who work in or govern schools are not safeguarding 'experts'; many new Headteachers, especially in the Primary sector, assume the Designated Senior Person for Child Protection (DSP) role for the first time when they take up Headships. Most have told us they welcome clear direction in this regard.
- 2.6 Our experience has been that it is invaluable to have the basic elements of good practice in this area of schools' work set out in the statutory guidance. For the overwhelming majority of schools it provides a clear baseline on which they can build good and outstanding practice to support and protect their pupils. Our experience is that where what constitutes 'good enough' practice is left to individual professional judgement, it becomes much harder to hold anyone to account if things go wrong.

3. The legislative framework

- 3.1 We are concerned by the omission from this statutory guidance of any guidance for those organisations charged with supporting schools in this area of work. Unlike SCSRE, the draft guidance is addressed solely to schools and FE colleges. It omits any mention of local authorities in their role as local education authorities. If as intended this draft guidance replaces SCSRE this will leave Local Authorities with no statutory guidance under sections 175 and 157 of the Education Act 2002. Similarly there is no reference to academy sponsors or academy chains and any role they might have in this area of schools' work.
- 3.2 It is important to note that Section 11 of The Children Act 2004 does not include schools or Local Authorities in their education function, as they are given equivalent responsibilities under the relevant provisions of the Education Act 2002. Whilst the s.11 Children Act guidance set out in Working Together to Safeguard Children (2013, Chapter 2) makes clear that LAs in their education function must have in place all the features set out at paragraph 4 (Chapter 2) in respect of their own functions, Working Together provides no guidance as to their role working with schools. Therefore the statutory guidance as currently drafted leaves an important hiatus for local authorities – a statutory duty with no statutory guidance as to how they are expected to meet it.

3.3 Wiltshire Council's work with schools on their safeguarding and child protection practice has contributed significantly to the development and improvement in practice from the position in 2004 when provision in schools was extremely varied and inconsistent, to a situation where most now have in place structures to support good safeguarding cultures and good outcomes for children. However, this will not simply sustain itself – it needs constant attention to ensure that practice keeps pace with change and new learning, to ensure that systems in schools are sufficiently robust to withstand changes in key personnel, and to challenge poor practice whenever it is identified.

4. Consultation 'Key points' – comments

4.1 The consultation is based on the premise that *individuals should use their own judgement* to take appropriate action. We believe it is crucial that such judgement is based on evidence of what works. What we are told by our local school leaders, including those who have been in post for many years, is that they welcome a structure to work within as they fear the consequences of 'getting it wrong'.

5. Current requirements which should be added to the consultation document

5.1 SCSRE includes some basic statutory requirements with which governing bodies / proprietors have to ensure compliance. Those which are not mentioned in the consultation document, and which we believe should be retained include:

- Regular whole-school training *to be updated every three years* (not just as part of induction training)
- DSP *training in inter-agency working, provided or delivered to standards agreed by the LSCB, to be updated every two years* – the draft guidance says that the designated person should '*act as a source of support, advice and expertise for school staff*', but removes the expectations in terms of that person's training
- Training for governors (or equivalent) to understand their duties and responsibilities
- A nominated (lead) governor for child protection
- An annual review by the governing body (or equivalent) of how safeguarding and child protection duties have been discharged
- A whistle-blowing policy

5.2 In our view it is of considerable concern that the consultation has eliminated all specific training requirements for school staff, DSPs and governors (or equivalent) replacing specified content and timescales with a woolly comment about *appropriate* training. This leaves too much room for interpretation about what is in fact appropriate. Different Headteachers, DSPs, governors (and OfSTED inspectors) will no doubt have different views on this. Annex B setting out areas of responsibility for the DSP has a heading 'Training' but has no requirements about what training and experience the DSP should themselves have to equip them for the role other than having appropriate '*status and authority within the school management structure*'.

6. Safer recruitment

Consultation question 1:

Do you support the removal of the regulation that requires the Secretary of State approved safer recruitment training for at least one member of a recruitment panel?

Response:

No

Comments:

See below

- 6.1 Our experience has been that the safer recruitment training has had a considerable and important impact on the quality of understanding within schools of the reasons behind the clear and prescriptive expectations set out in SCSRE for safer recruitment practice. As a result recruitment practice has become considerably more robust and effective in preventing inappropriate appointments. We have spoken to many heads who were initially reluctant to do the training but afterwards spoke very positively about it, often saying that it had completely changed their attitude and understanding of safer recruitment and had as a result significantly changed their recruitment practice. We therefore think it important that this clear understanding should be present in every interview panel for school appointments. This is particularly relevant for large primary schools, secondary schools and FE colleges, where it would be both impossible and inappropriate for the head teacher or principal to be part of every interview panel.
- 6.2 We are very concerned that the statutory guidance on safer recruitment is reduced to vetting checks. Our experience has been that the specific procedural expectations currently set out in SCSRE (written application form, written references, careful check of employment history) are crucial in enabling schools to identify inappropriate candidates. We have had several experiences of being called in to advise and support independent schools following a serious LADO investigation only to find that their recruitment practices were very lax. Being able to point to the specific expectations currently set out in the statutory guidance has been an important tool in ensuring that poor practices are abandoned. Again, our experience has been that working with those schools over a period of time has been effective in developing their understanding and improving their practice in a way that would have been much more difficult to achieve without the clear statutory guidance.

7. Employment vetting and barring checks

- 7.1 There is a missed opportunity in this draft document to rationalise and consolidate the existing guidance for schools in this area, including useful flowcharts or tables to assist those in schools who undertake the checks (often school administrators, business managers and Bursars).
- 7.2 If a school arranges a 'school exchange', this is not a private fostering arrangement as defined by the Children Act 1989 and Children (Private

Arrangements for Fostering) Regulations 2005 as such arrangements rarely (if ever) exceed 28 days. If they do, then the LA should be notified and will conduct a range of checks.

- 7.3 If the intention in this consultation is to relieve schools of conducting criminal records checks on adults who are host families on school exchange visits, then we feel sure that many Headteachers will welcome this but there will need to be a change to legislation as the current definition of regulated activity (in the Safeguarding Vulnerable Groups Act 2006) includes 'overnight'.

8. **Annex A – statutory framework**

- 8.1 Our recommendation is that this annex is expanded to include and bring together key statutory guidance which is referred to in footnotes throughout the document, such as 'Working Together to Safeguard Children' 2013, 'Dealing with Allegations of Abuse against Teachers and Other Staff' 2012 etc.

9. **Annex B – Broad areas of responsibility for the Designated Senior Person for Child Protection**

- 9.1 We welcome the retention of this as a mandatory role within schools' senior leadership teams.

- 9.2 There is an important error in the third bullet point under the heading of 'referrals' – the bullet point sets out the opposite to what is expected practice. It should state that *DSPs **should** seek consent or inform parents of a referral to Social Care unless to do so would place a child at increased risk of harm.*

- 9.3 The section on Training is poorly drafted in that it does not make clear what training the DSP should be delivering and what training the DSP should themselves undertake.

- 9.4 Our experience indicates that two additional areas of work should be included in this summary of the DSP role:

- Maintaining a clear system for recording all welfare or child protection concerns about individual pupils brought to the school's notice or identified by adults working in school
- Developing and embedding in school life a clear understanding and culture of safer working practice

These are the two main areas with which, in our considerable experience, schools may well struggle but they are crucial in underpinning good safeguarding and CP practice. They are both areas which are frequently highlighted in Serious Case Reviews involving schools as areas for improvement.

10. **Summary**

- 10.1 SCSRE is overdue for revision and updating. This provides a valuable opportunity to incorporate learning from best practice (such as reported by OfSTED) and identified problem areas for example through convictions (e.g. child sexual exploitation; abuse of trust); Serious Case Reviews (e.g. Khyra Ishaq; North Somerset / Nigel Leat); and research (e.g. the work on neglect of teenagers). However, the guidance is based on the unsupported assumption that everyone who works with children will use their 'good sense and judgement' and

make 'sensible safeguarding decisions'. Sadly good intentions do not protect children: experience tells us that what protects children is adults who know what to do and get on and do it. To support this they need (and in our experience want) clear unambiguous guidance about what to do and how to do it.