



CONTEXTUAL SAFEGUARDING IMPLEMENTATION TOOLKIT

A Legal Framework for Implementing Contextual Safeguarding

Initial opportunities and consideration

By Carlene Firmin, Adele Eastman, Ian Wise QC, Elizabeth Proschaka and
with contributions from Dez Holmes, Professor Jenny Pearce and Sarah
Wright

March 2019

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In 2018 the term 'Contextual Safeguarding' was inserted into *Working Together to Safeguard Children (Working Together)*, as well as *Keeping Children Safe in Education (KCSIE)*. This briefing outlines the current legal tools available for implementing Contextual Safeguarding as well as questions that have emerged when trying to test the approach. It has been developed following a roundtable hosted by the University of Bedfordshire and Farrer and Co in early 2018. The roundtable explored what the Contextual Safeguarding framework requires from local practice and considered how much of this is enabled by the existing legal and policy framework. Building on this discussion, and with reference to the learning from Contextual Safeguarding test sites, as well as the 2018 amendments in *Working Together* and *KCSIE*, this briefing documents elements of the child protection legal and policy framework in England that enables the implementation of a Contextual Safeguarding framework. It also highlights opportunities within wider legislation and regulation which can be drawn upon in this endeavour.

It is intended for anyone with an interest in developing Contextual Safeguarding and therefore details the basic elements of child protection legislation and statutory guidance which authorise/enable the approach, as well as highlighting legislative and policy questions being raised by those already engaged with this area of work. It therefore provides a single point of reference for all local leaders and legal departments with a role in developing local safeguarding approaches, and will be updated over the coming years as work in this area progresses.

The briefing is structured into the following sub sections:

Introduction: Provides an overview of Contextual Safeguarding with reference to child protection reforms and local efforts to advance safeguarding responses to children – particularly adolescents.

Section 1: Documents the fundamental elements of the Children Act 1989 and the Children Act 2004 of relevance to a Contextual Safeguarding approach.

Section 2: Discusses the additions to *Working Together 2018* related to Contextual Safeguarding.

Section 3: Highlights the new references to Contextual Safeguarding made in *KCSIE 2018*.

Section 4: Discusses elements of the United Nations Convention on the Rights of the Child (**UNCRC**), the Equality Act 2010, and the Public Sector Equality Duty (**PSED**), which it is believed, could leverage greater involvement from sectors which operate in extra familial settings.

Section 5: Highlights legal questions that are yet to be answered within the current legal and policy framework, and areas that are under, or require, development in order to further embed and fully implement Contextual Safeguarding.

Appendices are also included which provide further detail of relevant legislation referred to in the main body of the briefing.

The collective consequences of these existing and potential legislative/policy levers for practice are discussed in a conclusion, which outlines the next steps being taken by Dr Carlene Firmin and others to further develop a legal framework for Contextual Safeguarding.

Introduction

Child protection systems have developed over decades, informed by a number of system-wide reviews, as well as inquiries and serious case reviews into the circumstances of individual children who have suffered significant, and sometimes fatal, harm (i.e. Laming, 2003; Munro, 2011)

Over the past decade there has been increased attention paid to the child protection responses afforded to children – particularly adolescents who encounter significant harm in their peer groups, schools, neighbourhoods and online community contexts – harm which has involved them being criminally and sexually exploited, trafficked, bullied to the point of committing suicide or being (fatally) injured by peers in acts of serious youth or gang-related violence (Sidebotham, et al., 2016)

Local areas around England and Wales have been at the forefront of developing innovations to address the pressure that responding to these issues has created for children's services (Hanson & Holmes, 2015; ADCS, 2018). Acknowledging the opportunity to work with parents as partners in protecting children from external risks or experience of abuse, co-creating plans with children outside of formal child protection procedures, providing them with a range of trusted relationships in youth work, education and community settings, as well as exploring the interface of school exclusions, offending and vulnerability – particularly during adolescence, are just some of the matters to have been considered (ADCS, 2018; Firmin, Wroe, & Lloyd, 2019 Forthcoming; Hanson & Holmes, 2015; Rees, Luke, Sebba, & McNeish, 2017). Escalating social work attention to extra-familial risk has increased the number of children over the age of 12 entering care for the first time, with child and family social work offering limited solutions for reducing risks within extra-familial settings, and risks outside families contributing to the breakdown of relationships or significant risk to a young person's life in their local community (Hanson & Holmes, 2015; Luke, 2017). It was in this context that Contextual Safeguarding was offered - to provide a language to communicate the limitations of child and family social work in addressing extra-familial forms of risk and abuse, and to offer a framework for developing approaches that would create safety for children in their schools, communities and peer groups (Firmin C, 2017b).

Contextual Safeguarding, in many respects, requires adaptations to the cultures, structures and practices which characterise child protection, and the development of this work is on-going. However this briefing indicates that the principles of the approach are very much framed within the broader ambitions of the child protection system. Lord Laming's report (2003) into the death of Victoria Climbié recognised the importance of bodies with responsibilities towards children to act in a co-ordinated manner. Section 11 of the Children Act 2004 places a duty on a range of public bodies that have contact with children (including of course local authorities) to make arrangements for ensuring that their functions are carried out having regard to the need to safeguard and promote the welfare of children, and to make sure that any services provided by another person pursuant to the person/body discharging their functions also have regard to that need. Whilst this language may sound inauspicious, the courts have now clarified that this requires the specified public bodies to "actively promote the welfare of children". This position has been reiterated in the Munro review (2011), and the Children and Social Work Act 2017.

Implementing Contextual Safeguarding requires that agencies work together to promote the welfare of children – with specific reference to their welfare in extra-familial contexts. It is in this

context that the Government last year published revised statutory guidance *Working Together* and *KCSIE*). This guidance has integrated the language of Contextual Safeguarding into safeguarding statutory guidance which, as explained below, requires consideration of the needs of the child in their wider extra-familial context in addition to their immediate family.

The amendments have been made at a time of increasing concern from Government departments, academics, policy makers, and legal experts, amongst others, to improve the safeguarding response that is afforded to children – particularly adolescents (ADCS, 2018; Hanson & Holmes, 2015; Rees, Luke, Sebba, & McNeish, 2017). Whilst these revisions come at a time of considerable financial difficulty for children’s services and related safeguarding partner agencies, the implementation of Contextual Safeguarding should save resources, or create cost-avoidance opportunities, in the longer term by effective creation of safe environments (impacting multiple children) at an early stage. More importantly, however, it presents the opportunity to understand the needs of children, and the contexts they inhabit better so as to enable those working with them to more effectively ensure that they are safe and their welfare safeguarded.

This briefing primarily outlines the existing legal framework for implementing Contextual Safeguarding. It later considers what reforms may be required to further embed and effectively utilise the framework as safeguarding practice develops to better engage with the risks and/or experiences of abuse by children in extra-familial settings. In doing so, it provides a foundation for Local Safeguarding Partnerships to draw upon as they begin to consider how they will implement Contextual Safeguarding locally. It also contributes to the necessary national discussion that is required to engage a new set of partners (such as transport, private business, planning, waste management, housing, sport and leisure and so on) in delivery of plans that are devised and implemented to create safety for children – and particularly adolescents, in their peer groups, schools, neighbourhoods and in online contexts.

Contextual Safeguarding

Coined by Firmin (2015), the term Contextual Safeguarding was first introduced in 2015 to provide a framework for ensuring child protection systems were equipped to respond to abuse that children – particularly adolescents - are exposed to and/or experience in extra-familial settings. Initially, through a series of case reviews (Firmin, 2015, 2017a), and latterly through practice audits and action research in 14 local authorities in England (to develop responses to peer-on-peer abuse) (Firmin, et al., 2016; Lloyd, Fritz and Firmin, 2017), it became apparent that safeguarding partnerships required a framework that not only saw a child – and their behaviour – ‘in context’, but was equipped to assess and intervene with those contexts when they were associated with risks and/or experiences of abuse. While research has long recognised that some forms of abuse that predominate in adolescence are associated more to community/peer contexts than familial ones (Barter, 2009b; Catch 22, 2013; Hanson & Holmes, 2015; Pain, 2006; Pitts, 2013; Sidebotham, et al., 2016), there has been little attempt to reform safeguarding practice in-line with this lived reality for children. Instead, relocation of adolescents away from schools and communities in which they have encountered harm, and 1:1 interventions that can build the resilience or change the behaviours of individual adolescents who remain in harmful circumstances, have dominated the practice model – the role of social care and related safeguarding partners within this being the assessment of and intervention with families of adolescents affected by extra-familial risks or abuse – to better support (and in some cases control) their children (Firmin C. , 2017a; Hanson & Holmes, 2015; Sidebotham, et al., 2016).

By critically examining this dynamic in partnership with practitioners, Firmin (2017b) developed a Contextual Safeguarding framework comprised of four domains to describe child protection approaches that would engage with extra-familial risk or abuse. These four domains posited that in order to sufficiently safeguard children – particularly adolescents – from risk or abuse in extra-familial settings, safeguarding partnerships need to:

a) *target* – the home, peer group, school, neighbourhood or online contexts where abuse occurs, through assessment and intervention, in addition to the individuals affected;

b) do this within a *child protection legislative framework* – to ensure that the response is welfare led, is not necessarily triggered by – or dependent upon – a crime being committed or a criminal investigation being conducted;

c) build *partnerships* with agencies who have a reach into extra-familial contexts – such as education, voluntary and community sector organisations, youth work, housing, retail, transport and licensing, in addition to children – particularly adolescents (as peers), and parents themselves: and

d) *measure success* by risk reducing in contexts of concern – not solely by a change in the behaviours of any individuals who have encountered or instigated abuse unsafe contexts.

Contextual Safeguarding has, in essence:

- Provided Government departments, policy makers, local leaders, practitioners and others with a shared language to articulate what many already knew - that during childhood, and especially during adolescence, risks of and/or experiences of abuse can shift into communities, and traditional child protection structures are limited at addressing these; and
- Offered all of those stakeholders a framework through which to develop approaches that are more responsive to risks faced by and/or experiences of children and their families.

Hackney Children and Family Service has been embedding a Contextual Safeguarding approach since 2017, and from 2019 a further five local authorities in England and Wales will undergo the same process. Throughout these test sites the extent to which legislative, regulatory or policy reform is required is being identified. With respect to the work undertaken thus far a) this has assisted us in exploring what is already possible within the existing legal parameters, and b) where questions remain – we have documented both sets of learning in this briefing.

1. Components of child protection legislation relevant to Contextual Safeguarding

Children Act 1989 (CA 1989) – Section 17(1) and (10)

The CA 1989 places a duty on councils to promote and safeguard the welfare of children in need in their area (Detailed in Appendix A). However, the CA 1989 duty does not specify that the factors which may undermine a child's ability to achieve/maintain a reasonable standard of health or development, or which may negatively impact in either or both respects, need to originate from a child's family. As such, if factors in extra-familial contexts – including a child's peer group, school, neighbourhood or online – present a risk to or impact a child's health or development, such that the criteria of harm in the legislation is met, then this child should be designated a 'child in need'. Therefore, even without the explicit references to extra-familial risk which now features in *Working Together 2018* and *KCSIE 2018* (see Section 2), child protection legislation already places a duty on all local authorities to promote and safeguard the welfare of such children from extra-familial risks and/or harm. The revisions to *Working Together 2018* build on this by stating that interventions should focus on these wider factors of extra-familial contexts/environments in which children are at risk of or are experiencing such abuse – something which is not specified in Section 17(10) of the CA 1989. Indeed while Section 17 gives power to professionals to put in place services for children and for their families it does not specify that services can also be provided for peer groups, or school environments, that may be required to for reduce risk (although it does not prohibit this).

In terms of Section 47 of the CA 1989 there is invariably a primary focus on families. The key point at which Contextual Safeguarding is considered to be most relevant in legislation is at the point of the child in need assessment but it is clearly also relevant to the child at risk assessment (although these are sometimes conflated).

This Section 17 duty also promotes a child's continued upbringing by their family where possible. When experiencing extra-familial risk, some children have been placed into care, and moved away from their families. By promoting approaches that seek to create safety in these extra-familial contexts, the adoption of Contextual Safeguarding should provide a route through which children can remain with those families, and those families can remain in their communities.

Children Act 2004 (CA 2004) – Section 10 and 11

Section 10 - Duty to co-operate

Under Section 10 of the CA 2004, local authorities have a responsibility to promote inter-agency co-operation to improve the well-being of all children (For detail see Appendix B). Section 10 of the CA 2004 allows each local authority to identify a range of other appropriate people or agencies working with children in the local authority's area - outside those which are listed as having a duty to co-operate with it - such as retail outlets, libraries or faith groups, which provide services directed at children, and engage in activities with them in this regard. Local authorities could seek to establish relationships with such agencies and include them in their arrangements to promote co-operation on these grounds – for example, agreeing referral processes, attendance at meetings, contributions to assessments – for the purpose of improving the welfare of all children.

Section 11 – Duty to safeguard and promote welfare

Under Section 11 of the CA 2004 the organisations listed in Appendix B also have specific statutory duties to exercise their functions by having regard to safeguard and promote the welfare of children. (For detail see Appendix B).

In practice, many Local Safeguarding Partnerships (**LSPs**) (under new arrangements from 2019) can ask partners listed in Table B to self-assess and report the extent to which they meet the safeguarding duties outlined in Section 11 of the CA 2004, and detailed in *Working Together 2018* – referred to as a Section 11 Audit. In relation to Contextual Safeguarding, LSCBs/LSPs could request a Section 11 audit from a library or those who manage a local park or adventure playground, for example, for them to assess how they have regard for the need to safeguard and promote the welfare of children. Hackney and City Safeguarding Children’s Board, for example, amended its Section 11 audit in line with the Contextual Safeguarding framework by:

- Requiring organisations include within their planning, training, implementation and reporting activities explicit reference to extra-familial risk of harm, which includes an understanding of the contextual nature of adolescent safety.
- Expecting organisations to consider and mitigate structural, systemic and cultural issues such as unconscious bias or harmful gender norms within their own organisations and know how these contribute to safeguarding of children.
- Ensuring that organisations are aware of the Hackney Wellbeing Framework and use it to work collaboratively to respond to concerns of risk or harm, either for individual children or in relation to a context (i.e. peer group).

This function is strengthened by an additional bullet point included in the Section 11 list of *Working Together 2018* which requires services listed in Appendix B to demonstrate how they provide an equitable, protective and safe environment for children.

2. Contextual Safeguarding in Working Together 2018

In Chapter 1, paragraphs 33-34 titled ‘Contextual Safeguarding’, *Working Together 2018* states that:

- children may also be vulnerable to abuse or exploitation from outside their families;
- these extra-familial threats might arise at school and other educational establishments, from within peer groups, or more widely from within the wider community and/or online;
- these threats can take a variety of different forms, and children can be vulnerable to multiple threats (examples of which are given);
- assessments of children in such cases should consider whether wider environmental factors are present in a child’s life and are a threat to their safety and/or welfare;
- these factors should also be considered in assessments of children who are alleged to have harmed others, to understand the impact on their safety and welfare;

- interventions should focus on addressing these wider environmental factors, which are likely to be a threat to the safety and welfare of a number of different children –who may or may not be known to local authority children’s social care;
- assessment of children in such cases should consider the individual needs and vulnerabilities of each child;
- assessments should also consider the capacity of their parents to support them, including helping the parents and carers to understand any risks and support them to keep children safe and assess potential risk to the child.

This new text signals that not only should the extra-familial risks that children face be considered in assessment, but that wider environmental/contextual factors should be the subject of intervention. This directs social workers who lead assessments, and the partners with whom they work to safeguard children, towards an approach which includes intervention plans for extra-familial, as well as intra-familial, contexts, where children are at risk of and/or are experiencing abuse.

Beyond these two new paragraphs; there are a number of further changes to the text in *Working Together 2018* that align the guidance more consistently with a Contextual Safeguarding framework. These changes are as follows (changes made are indicated in italics):

- Chapter 1, paragraph 12: ‘In addition to high quality support in universal services, specific local early help services will typically include family and parenting programmes, assistance with health issues, including mental health, *responses to emerging thematic concerns in extra-familial contexts*, and help for emerging problems relating to domestic abuse, drug or alcohol misuse by an adult or a child...’

This insertion directs safeguarding partnership towards the provision of effective early help services to address assessed needs in contexts beyond families (be they peer groups, school, community, and/or online settings) where thematic concerns are emerging. This may, for example, include a response to increasing concerns about sexual harassment or sexist language within a year group at a school¹, or escalating tensions between groups of children from different schools at a transport hub in the afternoons. Early help services, in such circumstances, could include a bystander intervention programme in a school and/or an increased detached youth work presence in the community, with further engagement work undertaken with children and school staff/community members, to increase safety, and reduce risks and the potential for escalation of the concerns in those settings.

- Chapter 1, paragraph 25: ‘Information sharing is also essential for the identification of patterns of behaviour when a child has gone missing, *when multiple children appear associated to the same context or locations of risk*, or in relation to children in the secure estate where there may be multiple local authorities involved in a child’s care...’

This insertion suggests that safeguarding partnerships have information sharing arrangements in place that aid the identification of connections between multiple children – particularly when a

¹ This is also relevant to the Equality Act and PSED obligations on discrimination and harassment issues in schools (detailed later in this briefing)

number of children are being impacted by risk in a shared context (such as a peer group, or school), or location (physical and/or online). This has implications for profiling work – signalling the need to profile locations, as well as individuals, associated with abuse and violence. It also provides space to address challenges of individualised case work identified in case reviews (Firmin C. , 2017a; Johnson, 2013) and consider how best to co-manage cases across a service or partnership, and bring intervention plans or assessments together, where children share risk and there is an opportunity to impact them all through work targeted at the context which connects them all.

- Chapter 1, paragraph 53: ‘Every assessment should reflect the unique characteristics of the child within their family and community context. Each child whose referral has been accepted by children’s social care should have their individual needs assessed, including an analysis of the parental capacity to meet those needs *whether they arise from issues within the family or the wider community.*’
- Chapter 1, paragraph 56: ‘Social workers, their managers and other practitioners should be mindful of the requirement to understand the level of need and risk in, *or faced by*, a family from the child’s perspective and plan accordingly, understanding both protective and risk factors the child is facing. The analysis should inform the action to be taken which will have maximum impact on the child’s welfare and outcomes.’

These insertions provide recognition that factors outside of a family can impact on the level of a child’s need and risk, and that these factors can potentially compromise parenting capacity. Therefore risks faced by families also need to be considered during an assessment process, and importantly the interplay between these factors and parenting capacity. If factors outside of a family are impacting the level of a child’s need and risk then these factors should also be the subject of intervention as discussed above (in relation to paragraphs 33-34).

- Chapter 2, paragraph 49: ‘YOTs...are therefore well placed to identify children known to relevant organisations and agencies as being most at risk of offending *and the contexts in which they may be vulnerable to abuse*, and to undertake work to prevent them offending or protect them from harm...’

This insertion explicitly recognises that youth offending teams, who may be supporting such children, are well placed to identify the contexts in which they themselves may be vulnerable to abuse. In this sense, should youth offending practitioners identify trends associated to contexts which present a risk to children who have allegedly harmed others, then these contexts may also be the subject of interventions to address wider environmental factors impacting the welfare of children (in paragraph 34).

Finally, Chapter 2 of *Working Together 2018* concerns a specific statutory duty – under Section 11 of the Children Act 2004 (**Section 11 duties**) (as explained above) – that a range of named organisations and agencies working with children and families have to meet to promote the welfare of children, and ensure they are protected from harm. Previous requirements were primarily focused on arrangements that such organisations should have in place to ensure safe recruitment, clear referral pathways etc. In line with Contextual Safeguarding principles, a new requirement has been added that all named organisations should have arrangements in place for:

'creating a culture of safety, equality and protection within the services they provide'. This addition requires a range of agencies to have considered whether harmful dynamics within their services - such as, sport, culture, leisure, youth and housing provisions – may facilitate risks of harm within children's relationships for example.

In addition to these Section 11 duties, further safeguarding duties are also placed on individual organisations and agencies through other statutes (the key duties are set out in Chapter 2 of Working Together 2018). Many of these have an influence over extra-familial contexts – such as local authorities and district councils; schools, colleges and other educational providers; health providers; the Police; the British Transport Police; YOTs; voluntary, charity, social enterprise, faith-based and private sector organisations and agencies; and sports clubs/organisations.

In summary therefore, the changes in *Working Together 2018*:

- confirm that extra-familial risks and/or experiences of abuse – including, for example, criminal gangs and organised crime groups such as county lines, and sexual exploitation – are safeguarding and child protection issues;
- require the development of intervention plans for extra-familial contexts, should they be identified during a children's social care assessment;
- recognise that, in addition to high quality support in universal services, specific local early help services will typically include responses to emerging thematic concerns in extra-familial contexts;
- provide that information sharing is required for identifying patterns of behaviour – and connections between - multiple children when they appear associated to the same context or locations of risk;
- recognise that factors outside of – as well as within – a family can impact on the level of a child's need and risk;
- require that a Contextual Safeguarding approach is also taken for children who have allegedly harmed others- as well as those who are at risk of and/or experiencing extra-familial abuse, and recognises that the contexts in which the former may themselves be vulnerable to abuse also require attention from YOT practitioners, and;
- require all named organisations and agencies – in the context of their Section 11 duties - to have arrangements in place for: '*creating a culture of safety, equality and protection within the services they provide,*' so that, if the norms that develop within such services fail to challenge peer-on-peer abuse, steps could be taken to address, and in order for those services to be discharged (by the relevant named organisation or agency, or organisation or agency to which the services in question have been contracted out by them) having regard to the need to safeguard and promote the welfare of children.
- it is important to note that the guidance provides safeguarding partnerships with a great deal of discretion as to how these changes are applied. Each authority chooses the format of the assessment, and the pro-forma used to direct the assessor to the relevant questions and issues to consider in the assessment process. It would be helpful if each authority reviewed its assessment forms and protocols in light of these changes to *Working Together 2018* to ensure that they do encapsulate the wider issues of concern relevant to the child being assessed, so that Contextual Safeguarding is factored into the assessment and decision-making process.

3. Contextual Safeguarding in KCSIE 2018

The 2018 version of *KCSIE* provides, for the first time, a reference to Contextual Safeguarding, and a new Part Five dedicated to ‘Child on Child Sexual Violence and Sexual Harassment’ (between children in schools and colleges) – a matter that up until this point had featured in a small number of paragraphs in a more general Part of this statutory guidance. *KCSIE 2018* also includes additional information on peer-on-peer abuse, and sexual violence and sexual harassment (in its Annex A).

The inclusion of the above material can itself be leveraged by schools and wider safeguarding partnerships that want to utilise a Contextual Safeguarding approach when addressing the risks/abuse that children encounter in educational contexts. It provides recognition that the school environment itself can be one in which such abusive norms and behaviours can develop, and that factors external to school environments, for example within local neighbourhoods or online, can also impact the welfare of children in education.

Beyond this the following elements of *KCSIE 2018* are relevant to building a legal framework for Contextual Safeguarding:

- the term Contextual Safeguarding features in Part One of *KCSIE 2018* (paragraph 50). The guidance recognises that safeguarding incidents and/or behaviours can be associated with factors, and/or can occur between children, outside the school or college; it states that consideration must be given by all staff – but especially the designated safeguarding lead (and deputies) – of the context within which safeguarding incidents and/or behaviours occur; and that children’s social care assessments should consider any wider environmental factors which are present in a child’s life that are a threat to their safety and/or welfare. It is therefore important that schools and colleges provide such contextual information during referrals;
- paragraph 48 and 50 highlight that when children experience peer-on-peer abuse outside of a school/college environment, and in extra-familial settings, a safeguarding response as much as it is where children are at risk of and/or experience familial abuse;
- in terms of actions to be taken by a school or college following a report of ‘child on child sexual violence and/or sexual harassment’, important considerations are stated to include the wider context, and reference is made to Contextual Safeguarding (paragraph 251);
- multiple references are made in Part Five of the document about a need to assess and address the impact that an incident of child on child sexual violence and/or sexual harassment may have on a wider student body;
- reference is made, in the context of any conviction, to the importance of the school or college ensuring that both the child who has experienced abuse, and the child who has behaved in an abusive way towards them, remain protected, especially from any bullying or harassment (including online); and in the context of the ongoing response (safeguarding and supporting the child who has experienced abuse), to the importance of the school or college doing everything they reasonably can to protect them from bullying and harassment as a result of any report they have made.

Requirements for schools and colleges to consider wider peer dynamics as part of their safeguarding responses can position educational establishments to helpfully contribute to peer

interventions and peer mapping exercises which may feature in a wider Contextual Safeguarding approach (Lloyd, et al. 2019, forthcoming).

4. Potential opportunities in human rights and equalities legislation

Human rights legislation may also help create a legal framework for Contextual Safeguarding. The Human Rights Act 1998 enshrines the rights in the ECHR, including the right to be free from inhuman and degrading treatment, the right to private and family life and the right to non-discrimination. The UNCRC, which has been ratified by the UK but not incorporated into domestic law, makes the best interests of the child the primary consideration in all actions by public and private bodies concerning children. These measures not only give rise to enforceable rights for children, but create the framework in which public bodies should develop policies and measure their success in providing services to children and their families.

Equality Act 2010 and PSED

The Equality Act 2010 prohibits discrimination, including harassment and victimisation, in relation to a range of protected characteristics, including sex, race, age and disability. It applies both to private and public sector bodies when they act as employers and landlords, provide goods and services and provide education. Additionally, the public sector equality duty (PSED) requires public bodies to pay due regard to the need to eliminate discrimination, advance equality of opportunity, and promote good relations between groups in all their decision-making. The PSED has been deployed in the education context to compel the Department for Education to provide guidance on sexual harassment in schools. There may be opportunities for innovative use of the PSED. For example, it could be used creatively in the safeguarding context to influence local authorities to consider how they take account of children's needs when they grant tenancies to private organisations.

5. Questions and areas for development

A number of components of a Contextual Safeguarding approach require further direction in relation to legality and ethics of its application. In particular: the mapping and assessment of children's peer relationships (and the information sharing, data protection and privacy laws associated with this); and the engagement of private businesses in Contextual Safeguarding practices (including their involvement in assessments of contexts and the delivery of actions on intervention plans). These areas of practice require clarity in relation to and further testing of legal frameworks, to ensure feasibility and usefulness. The remainder of this briefing introduces those questions, and the initial identification of legal frameworks that can play a role in the development of answers.

The legality and ethics of mapping peer relationships as part of social care assessments

Despite a recommendation in *Working Together 2018* that practitioners should work to address risks shared across multiple children, there is a lack of clarity regarding the process by which practitioners can map and assess peer relationships. Hackney Children and Families Service instructed a QC to provide them with advice regarding the legality of mapping peer relationships as part of social care assessments. The full advice is available upon request to Hackney and Children and Families Services. It does not serve as advice for other areas, and any area wishing to develop this area of policy may wish to review that which Hackney have received and whether they wish to instruct their own.

In summary, it finds that it is legal to map children's peer relationships for the protection of their health – and it is through this lens (rather than the prevention/detection of crime) that peer mapping can occur from a welfare perspective. However, in order to do so, local authorities need to specify the conditions under which those relationships will be mapped, how the material will be handled, with whom it will be shared (and under what circumstances), and how the material will be used/destroyed. Once this process has been decided upon, a policy detailing the approach must be published in a public-facing document, including information on when/how parents will be informed should their child feature on a peer group map, or should a child feature on a map who up until that point had not been known to children's social care.

Levers in regulation, and in contract, that apply to services operating in extra-familial settings

To date, the engagement of private businesses – such as hotels, retail outlets and transport providers, in Contextual Safeguarding practices, has been voluntary. In Hackney, for example, Context Safeguarding Conferences were held in 2018 to discuss assessments of two public space locations – large and small local businesses participated in these assessments and conference meetings – but were not legally obliged to do so. In the future it may be that the following legal/regulatory levers could be drawn upon to ensure the consistent engagement of private businesses in Contextual Safeguarding approaches:

- *Health and Safety Legislation and Regulation:* Drawing on health and safety legislation – the Health and Safety at Work Act 1974 places an obligation on organisations not to carry out their undertaking in a way that would pose a risk to the health and safety of employees or individuals affected by their activities. The Health and Safety at Work Regulations 1999 impose further obligations relating to risk assessments.
- *Practice by Insurers:* Working with insurers: the organisation's private regulator or agency(cies) providing private entities with a license to operate, could incorporate requirements related to peer-on-peer abuse into their policies (this has been effective in some sectors already).
- *Planning Permission Requirements and Regulation:* Withholding planning permission from organisations whose safeguarding arrangements are deemed inadequate.

The above points are important as if private businesses are serving a certain proportion of children, and target them as a particular customer in the market, it is worth exploring whether we should be explicitly talking about their duty to safeguard children. Returning to the S.10 duty to

cooperate, and S.11 duty to safeguard and promote the welfare of children, the aforementioned regulatory levers could provide grounds upon which private businesses could be requested, and required, to provide information during context assessments, and to act on the assessment findings, in order to safeguard and promote the welfare of children.

Additional queries regarding the identification of, sharing information about, and intervention with extra-familial contexts

In the testing of a Contextual Safeguarding Framework in Hackney, multi-agency partners have needed to move beyond sharing information about and, where required, intervene to support, children and families. For the most part, sharing information about contexts, rather than personal details about individuals and families, should be easier (in relation to being compliant with privacy and data protection laws). However clarity over these processes, and the potential interface between information about contexts and about people requires further examination. Initial practice tests of the approach have required a range of partners to:

- Share information about the nature of contexts – for example schools have had to share information about rates of harmful sexual behaviour between students, feelings of student safety, and the content of their policies and curriculum as part of school assessments.
- Attend meetings to discuss assessments of contexts, and agree whether those contexts are such that children are in need or are at risk of significant harm – utilising locally developed threshold documents which do not have a statutory footing.
- Act in accordance with plans drawn upon from Contextual Safeguarding Conferences – to address significant harm within those contexts – despite contextual responses to significant harm not having the same statutory footing as familial responses to significant harm.

The legislative framework to compel engagement in these arrangements, and to ensure that they are ethically and legally compliant in relation to the gathering and management of data, requires on-going discussion and review. Furthermore, the work to clarify the legal framework for Contextual Safeguarding has, to date, focused on what welfare-based legislative tools permit. Questions remain as to whether policing, crime and disorder and community safety legislation can further enable this approach while maintaining its primary objective – safeguarding the welfare of children.

As new test sites begin to design and implement their own contextual assessments and meeting frameworks, further details will be available regarding the nature of these activities, and the extent to which they can be successful when delivered in the absence of a guiding statutory framework for such activities.

Conclusion

This briefing has outlined a range of ways in which legislation, regulation and guidance can assist local areas in beginning to take a Contextual Safeguarding approach. Given that such extra-familial abuse can result in children being in need, or suffering or likely to suffer significant harm, and can disrupt family life, agencies have a duty to intervene. The aforementioned 2018 additions to statutory guidance indicate a need for interventions to address contextual, as well as

individual, dynamics of abuse, and for a range of partner agencies to put arrangements in place to create protective environments for children. Human Rights and equality legislation offer further reinforcement of these positions, and the importance of developing approaches that are equipped to safeguard the safety and welfare of children.

In addition to existing legal levers, this briefing has also identified opportunities for further development as more local areas adopt a Contextual Safeguarding approach. In particular, testing of legal frameworks for mapping and assessing peer relationships, engaging private businesses in Contextual Safeguarding practices, and further clarification of privacy, data protection and information sharing requirement for both activities, is required. Testing of Contextual Safeguarding in multiple sites will also clarify whether the framework presented thus far is sufficient for establishing thresholds for assessment of, and intervention with, contexts; information sharing about contexts, and compelling partners to address contextual dynamics of risk.

As this work develops this briefing will be revised to ensure that local areas are equipped to adopt Contextual Safeguarding approaches and advance their responses to extra-familial forms of abuse.

Appendices

Appendix A: Detail of the Children Act 1989 duty

Section 17(1) of the CA 1989 states that:

It shall be the general duty of every local authority –

- to safeguard and promote the welfare of children within their area who are in need; and
- so far as is consistent with that duty, to promote the upbringing of such children by their families by providing a range and level of services appropriate to those children's needs.

Section 17(10) of the CA 1989 states that a child shall be taken to be in need if:

- a) he is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him of services by a local authority under this Part;
- b) his health or development is likely to be significantly impaired, or further impaired, without the provision for him of such services; or
- c) he is disabled.

The primary focus of legislation about children in need is on the needs of the child and how well they are progressing, in particular there is focus on whether their development will be impaired without the provision of services. Whilst local authorities are under a duty to take reasonable steps to identify children in need in their area, as highlighted above, they are under a general duty to safeguard and promote the welfare of children in need. Local authorities must carry out an assessment of a child, if that child may be in need of services and, if so, determine what services the child needs. The local authority then proceeds to decide whether or not to meet those needs.

Appendix B Section 10 and Section 11

Section 10 requires each local authority to make ‘*arrangements to promote cooperation*’ between the local authority, each of the local authority’s relevant partners (listed in Table 1), and such other persons or bodies working with children in the local authority’s area ‘*as the authority considers appropriate*’. The arrangements are to be made with a view to improving the well-being of children in the authority’s area – which includes protection from harm or neglect, alongside other outcomes.

Body (in addition to local authorities)	CA 2004 s10	CA 2004 s11
Police authority	X	X
Chief officer of police	X	X
Secretary of State re: functions in s2-3 of the Offender Management Act 2007	X	X
Provider of probation services required under s3(2) OMA 2007	X	X
British Transport Police		X
Prison or secure training centre		X
Youth Offending Team	X	X
Strategic Health Authority	X	X
Primary Care Trust	X	X
Special Health Authority		X**
NHS Trust		X
NHS Foundation Trust		X
Connexions Service	X	X
Learning and Skills Council	X	
Contracted Services	X	X
Such other persons as the authority considers appropriate	X	

Table 1 Bodies, in addition to local authorities, covered by key duties under CA 2004 – Section 10 and/or Section 11

Section 11 places duties on these organisations and agencies to have arrangements in place for ensuring that

their functions, and services provided on their behalf, are discharged having regard to the need to safeguard and promote the welfare of children

Appendix C: Human Rights and Equality Legislation

Article 3 UNCRC

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

The Committee on the Rights of the Child (**the Committee**) states, in its General comment No.14 (2013), that “the ‘best interests of the child’ is a right, a principle and a rule of procedure based on an assessment of all elements of a child’s or children’s interests in a specific situation.”²

The Committee has identified Article 3(1) “as one of the four general principles of the [UNCRC] for interpreting and implementing all the rights of the child, and applies it as a dynamic concept that requires an assessment appropriate to the specific context.”

The Committee underlines that the child’s best interests is a threefold concept:

- (a) A substantive right: to have his/her best interests assessed and taken as a primary consideration when different interests are being considered in order to reach a decision on the issue at stake;
- (b) A fundamental, interpretative legal principle: whereby if a legal provision is open to more than one interpretation, the interpretation which most effectively serves the child’s best interests should be chosen; and
- (c) A rule of procedure: whereby whenever a decision is to be made that will affect a specific child, an identified group of children or children in general, the decision-making process must include an evaluation of the possible impact (positive or negative) of the decision on the child or children concerned.

In terms of the nature and scope of the obligations of States parties to the UNCRC, Article 3(1) provides a framework with three types of obligations – for them to ensure that: a) the child’s best interests are *appropriately integrated and consistently applied* in every action taken by a public institution; b) all judicial and administrative decisions, policies and legislation concerning children

² General Comment No.14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art.3, para.1) – adopted by the Committee on the Rights of the Children at its sixty-second session (14 January – 1 February 2013)

demonstrate that the child’s best interests have been a primary consideration; c) the interests of the child have been assessed and taken as a primary consideration in decisions and actions taken by the private sector, including those providing services, or any other private entity or institution making decisions that concern or impact on a child.

When required to make a decision on a specific measure, an assessment and determination of the child’s best interests should be undertaken:

- the “best interests’ assessment” consists in evaluating and balancing all the elements necessary to make a decision in a specific situation for a specific individual child or group of children. The Committee considers it helpful to draw up a non-exhaustive and non-hierarchical list of elements that could be included in a best-interests assessment, and sets out elements to be taken into account in such an assessment;³
- the “best interests determination” describes the formal process with strict procedural safeguards designed to determine the child’s best interests on the basis of the best-interests assessment. The Committee invites States and all persons who are in a position to assess and determine the child’s best interests to pay special attention to a number of stipulated safeguards and guarantees.⁴

The Committee recommends that States widely disseminate its General comment No.14 (2013) to parliaments, governments and the judiciary, nationally and locally; that it should be made known to children – including those in situations of exclusion; as well as all professionals working for and with children; and society at large.⁵

As explained by Deidre Fottrell QC “the General Comments of the UN Committee are not binding on States parties and are considered soft law but they do have persuasive value as they constitute an authoritative restatement of the law by the body charged under the [UNCRC] itself with supervising States parties in their implementation of its provisions. The [European Court of Human Rights (**ECtHR**)] will often consider the parameters of substantive rights as set out in General Comments when issues arise as to the interface between other international treaties and [UNCRC] rights.”⁶

The question of whether the provisions of the UNCRC can be directly applied by our domestic courts has been the subject of various judgements by the Supreme Court, where the focus in each of the cases has been on the application of Article 3(1). As summarised by Deidre Fottrell QC, “in *ZH (Tanzania) v Secretary of State for the Home Department*...the Supreme Court followed the ECtHR in its use of Article 3 as an interpretive tool in judicial decision making and further accepted that it applied to any decision in respect of a child’s right to family life under

³ These include: the child’s views; the child’s identity; preservation of the family environment and maintaining relations; care, protection and safety of the child; situation of vulnerability; the child’s right to health; the child’s right to education

⁴ These include: right of the child to express his or her own views; establishment of facts; time perception; qualified professionals; legal representation; legal reasoning; mechanisms to review or revise decisions; child-rights impact assessment

⁵ Professionals working for and with children are stated to include: judges, lawyers, teachers, guardians, social workers, staff of public or private welfare institutions, health staff, etc.

⁶ Family Law Week: *The UNCRC in the Supreme Court – the impact of SG v Secretary of State for Work and Pensions*, Deidre Fottrell QC, 1 Garden Court Family Law Chambers, 21 May 2015

Article 8(1).⁷ In the context of that particular case the combined reading of s55 of the Citizenship, Borders and Immigration Act 2009 and s11 of the Children Act 2004 were considered to impose an obligation on decision makers to treat the best interests of the child as a primary consideration. Baroness Hale observed that the ‘spirit if not the precise language’ of Article 3(1) UNCRC had been translated into English law.⁸

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⁷ Article 8 ECHR provides a right to respect for one’s “private and family life, his home and his correspondence,” subject to certain restrictions that are “in accordance with the law” and “necessary in a democratic society”

⁸ *ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4, [2011] 2 AC 166, cited in Family Law Week: *The UNCRC in the Supreme Court – the impact of SG v Secretary of State for Work and Pensions*, Deidre Fottrell QC, 1 Garden Court Family Law Chambers, 21 May 2015

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Authors and Contributors to this briefing:

- Dr Carlene Firmin, Principal Research Fellow and Head of Contextual Safeguarding Programme, University of Bedfordshire
- Adele Eastman, Senior Associate, Farrer and Co.
- Ian Wise QC, Monckton Chambers
- Elizabeth Proschaka
- Dez Holmes, Director, Research in Practice
- Professor Jenny Pearce, Professor of Young People and Public Policy, University of Bedfordshire and Chair of the Local Safeguarding Children Board for the London Boroughs of Hammersmith and Fulham, Kensington and Chelsea and Westminster
- Sarah Wright, Director of Children and Families, London Borough of Hackney