

Aberlour response to the Scottish Government consultation on the revised national guidance for child protection 2020.

January 2021

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Introduction

Aberlour works with vulnerable children, young people and families throughout Scotland, providing services and support in communities around the country across a range of settings. We help to overcome significant challenges, like growing up in and leaving care, poor mental health, the impact of drugs and alcohol on family life, living with a disability, or the impact of poverty and disadvantage. We aim to provide help and support at the earliest opportunity to prevent problems becoming intractable or spiralling out of control.

We work with families to provide help and support to mitigate the most challenging circumstances for families, to prevent difficulties developing into crises that otherwise can often lead to risk of harm to the wellbeing and welfare of children. We believe that through working with families at the earliest opportunity we can best protect children from being exposed to the risk of neglect or abuse. Therefore, we welcome the opportunity to respond to this consultation on the revised national guidance for child protection.

Q1: Advice and Accessibility – This guidance seeks to provide advice to local partnerships and agencies to inform the development of local guidance, and has been structured in sections that are intended to be standalone and accessible to practitioners seeking advice on particular aspects of practice.

a) In your view, does the guidance fulfil these objectives?

To Some Extent

b) If you do not think the guidance fully fulfils these objectives, or if any sections are not sufficiently standalone please explain your view and suggest how improvements could be made.

The draft guidance document is comprehensive, provides clear structure and covers in detail much of the key policy and legislative context that aims to inform child protection practice. It provides more detail and context to help inform child protection processes than previous guidance, which is very helpful. However, as such, it is a very long document and will likely appear dense and convoluted for many practitioners in its current format.

We suggest that the presentation of the guidance can be improved in the following ways:

- **Format** – The length and scope of the document could prove to be inaccessible for many practitioners it is intended to inform. Consideration should be given to revising the format of the document, so it can be accessed and viewed in sections. It would be preferable to maximise the digital formatting options available, including accessible links to each part of the document from the content pages, as well as to appendices and further identified references and resources.
- **Language** – There is some use of professionalised language which may appear jargonistic and unfamiliar to some and may require explanation (e.g. ‘splitting’ – p.131; ‘frozen behaviour’ – p.139). Some sections of the document have variable quality of information, with differences in language use, such as ‘abuse’ and ‘maltreatment’. The language etiquette with regard to children with a disability should be changed to reflect a people first approach. The document uses the descriptor ‘disabled child’, whereas it is commonly accepted that people with a disability prefer not to be defined by their disability (e.g. describing a ‘child with a disability’, rather than a ‘disabled child’).
- **Accessibility** – It is our understanding that this guidance will be accompanied by a suite of additional resources and information in a range of formats, including child friendly, easy read and multiple language formats. This is crucial in order that all and any information regarding child protection processes and procedures is available and accessible to all children, young people, carers and parents who may be involved in child protection processes. However, there is no reference to these resources within the draft guidance. These resources should be explicitly referenced and identified at appropriate points throughout the guidance in order to aid practitioners supporting children, young people, carers and parents through child protection processes.

Q2: Legislative and Policy Development – This revised guidance seeks to reflect legislative and policy developments since 2014 and include relevant learning from practice and research.

a) Are you aware of any additional legislative or policy developments, research or practice that should be included?

Yes

b) If so please provide further details.

We believe the following legislation should be included within the legislative context section in Part 1 of the guidance:

- **The Domestic Abuse (Scotland) Act 2018** – This legislation recognises the impact that domestic abuse has on children, defined within the Act as any person under 18 years of age. If a child is adversely affected when the abuse occurred, even if they were not the focus of the abuse, then the offence becomes aggravated and it can result in a longer sentence. Importantly, this legislation provides further context in relation to children experiencing domestic abuse.
- **The Children (Equal Protection from Assault) (Scotland) Act 2019** – This new legislation commenced in November 2020. It removes the common law defence of ‘reasonable

chastisement' from Scots law and provides children with equal protection as adults from assault, prohibiting all forms of physical punishment of children by parents or carers.

- **Children (Scotland) Act 2020** – This legislation changes the law to improve the court process in contact and residence cases which decide the living and visiting arrangements for children. It makes changes to how decisions are made regarding contact and residence cases of children when parents are no longer together. It also covers changes to aspects of the Children's Hearings system, and is, therefore, relevant to child protection processes.

Q3: GIRFEC Practice Model – Our aim is to ensure that the guidance is fully integrated with the language and core components of the Getting it right for every child (GIRFEC) practice model.

a) Do you think the revised National Guidance for child protection is integrated with the GIRFEC practice model?

To Some Extent

b) Please explain your answer.

While it is evident in parts the GIRFEC practice model informs the guidance through the focus on principles and common language, it does not appear consistent to all parts of the guidance. In order that the guidance can be accessed and read in standalone sections, there needs to be greater consistency and more explicit reference to the GIRFEC practice model in all sections of the guidance. In addition to explicit reference to GIRFEC principles and practice throughout the guidance, it would also be beneficial for practitioners to signpost throughout the guidance how to access and use GIRFEC wellbeing resources and tools, such as the 'My World Triangle' tool. We also believe the guidance could be further strengthened by outlining the continuum of support for all children from universal support through to protection from significant harm.

Q4: Practices and Processes – Part 3 seeks to accurately and proportionately describe the practice and processes critical in the protection of children.

a) Are there any practices or processes that are not fully or clearly described in the guidance?

Yes

b) If so, please state which processes/practices are not fully or clearly described and suggest how the description could be improved.

Accessibility

The guidance could be improved by highlighting the challenges for children and parents with a learning disability or learning need regarding the accessibility of child protection processes, and the communication about those processes. The communication needs of those with learning disabilities or learning needs must be recognised and met at every point, from GIRFEC through to child protection processes, investigations and beyond. The guidance outlines general principles for involving children, young people and families in child protection processes. It states: "*Parents and carers, and children of*

sufficient age and understanding, should be given a written record of decisions taken about the outcome of an investigation...". Records or information of any kind pertaining to child protection processes should be provided to children, young people, carers and parents in appropriate and accessible formats. The children of parents with learning disabilities face a significantly increased likelihood of being subject to child protection measures, therefore all information relating to child protection should be available in accessible and easy read formats. The need to provide information in relevant, appropriate and accessible formats should be explicit within the guidance. We believe the guidance should reference the Scottish Commission for People with a Learning Disability (SCLD) Good Practice Guidelines to Supporting Parents with a Learning Disability¹, to assist practitioners working with parents with learning disabilities or learning needs.

Contextual Safeguarding

It is positive to see references to contextual safeguarding within the guidance, and reference to interrupting patterns of harm in the external environment in the assessment section. For contextual safeguarding to happen effectively change needs to happen in the environments in which the child is being harmed. However, we see children being moved from one residential care home to another because they can't be kept safe in the house (e.g. alcohol and drug misuse; exploitative relationships in the community). Children are moved (and possibly charged) and the people harming them find other vulnerable children or young people to exploit or abuse. The context in which harm occurs does not change. It would be helpful for the guidance to go further than suggesting that the context should be 'considered'.

Lead Professional

Outlining the approach to identifying and agreeing the lead professional in Part 1 of the Guidance it states: *"The partners involved in supporting the child need to agree which professional takes on the lead professional role, co-ordinating a multi-agency child's plan. The lead professional can be drawn from any of the services or agencies which are partners to the child's plan."* Whilst this was always the intention within GIRFEC, it is our belief that this would have to be promoted within statutory social work services to be understood and guide decision making. It is the third sector practitioner who has a better relationship with a family and knowledge of their circumstances, however, rarely are they chosen to be the lead professional. The guidance could be strengthened by reaffirming a partnership approach, as per GIRFEC, to working with families by outlining best practice where children and families can influence decision making on who the lead professional is.

Named Person

Despite named person continuing to be a key principle of GIRFEC, in practice this does not happen in all areas. There exists some confusion for many practitioners regarding the role of named persons due to a change in Scottish Government policy following the failure to successfully implement Part 4 of the Children and Young People's (Scotland) Act 14. Outlining that the named person role is non-statutory and does not operate across all local authorities will help address uncertainty for those who are unclear about the named person role.

¹ https://www.sclld.org.uk/wp-content/uploads/2015/06/Supported_Parenting_web.pdf

Third Sector

In Part 1 the guidance states: “Anyone who has cause for concern about a child or adult at risk of harm should share information according to their organisation’s local protocol.” We believe this does not provide sufficient clarity for third sector organisations and practitioners on what steps to take or how to challenge decisions if they are concerned about action or inaction of statutory agencies. There should be further and more explicit guidance for what third sector practitioners should do and what process they should follow if concerns are not shared or actioned by statutory agencies.

Q5: Assessment Section – A new section of this National Guidance (Assessment part 2b) provides advice about child protection assessment practice.

a) Is this section sufficiently clear and does it cover all of the aspects you would expect?

To Some Extent

B) If No or To Some Extent, please suggest how this section could be improved.

This section outlining child protection assessment is clear and links well to GIRFEC. It is welcome that strengths-based approaches have been included that move away from being focused on deficits and risk. The inclusion of examples of children who appear resilient or independent but may be struggling is helpful, as it is our experience this can be especially true of young carers.

In the ‘Common Pitfalls’ section in Part 2(b) we would advise including reference to ‘Start Again Syndrome’: “The ‘Start Again’ syndrome is an error that commonly occurs in the assessment of child protection cases as highlighted by Brandon (2008) and the term is used to describe practitioner’s desire to ‘start again’ or ‘view the case with fresh eyes’ which often results in poor analysis of past history and parenting capacity. Interventions are tried again and again, with the absence of critical reflection as to whether outcomes are actually changing for the child”.²

Q6: Description of child protection processes and procedure – This National Guidance covers the consideration, assessment, planning and actions that are required, when there are concerns that a child may be at risk of harm. It also provides direction where child protection procedures are initiated. This is when Police, Social Work or Health determine that a child may have been abused or may be at risk of significant harm and an Inter-agency Referral Discussion (IRD) will take place.

a) Are the processes and procedures that lead to and follow IRD clearly described within the Guidance?

To Some Extent

b) Please provide additional comments.

Part 3 of the guidance outlines the IRD as a process of one or more meetings up to the Interim Safety Plan (ISP), assuming the ISP will have either multi-agency agreed actions or potentially no further

² <https://professionals.childhood.org.au/prosody/2017/04/start-again-syndrome/>

action is decided. This process should ensure a final meeting to finalise and agree the ISP, as this is end of IRD process. We are aware that IRDs are not used consistently across the country and are interested to understand what the intent is in those areas where IRDs are not utilised. Furthermore, we also note that there is no reference in the guidance to case discussions, which can be useful planning mechanisms for including families or as professional planning meetings, and are curious about their omission from the guidance.

As the guidance advocates a children's rights approach to involving children in child protection processes and procedures, it is important that children's views should be represented throughout. It is essential to ensure accessibility for children and young people – and parents – who have learning or communication needs within these processes. Children should understand what is happening to them and why, and the guidance should explicitly guide practice in that regard. To achieve this and ensure a rights-based approach to child protection processes, it should be clear that independent advocacy for children and parents is available, and that all information relating to child protection processes should be available and accessible through a suite of appropriate resources.

Q7: Integration of health guidance – We have integrated previously separate guidance for health practitioners into the revised guidance and more clearly defined the key role of health in protecting children at risk of harm from abuse or neglect.

Do you have any comments on specific aspects for health practitioners?

We believe the guidance should be for all practitioners who are part of child protection processes, investigations and assessments, including health.

Q8: Neglect – The draft National Guidance defines 'neglect' as child abuse, where it:

"Consists in persistent failure to meet a child's basic physical and/or psychological needs, likely to result in the serious impairment of the child's health or development. There can also be single instances of neglectful behaviour that cause significant harm. Neglect can arise in the context of systemic stresses such as poverty and is an indicator of support needs."

a) Do you agree with this definition?

To Some Extent

b) Please provide additional comments.

We welcome that Part 1 of the guidance outlines context in relation to poverty and material deprivation, stating: *"Poverty must never be a reason for removal of children from the care of their family"*. However, there must be greater distinction between neglect *"arising in the context of systemic stresses such as poverty which is an indicator of support needs"* and neglect as understood as being deliberate or wilful. It is our experience that too often this distinction is not recognised in practice.

The association between poverty and neglect is complex and can be problematic. The consequence of poverty and material deprivation for families is that many are unable to meet their children's basic and essential needs without help and support. Around 1 in 4 children in Scotland live in poverty. All indicators show that child poverty is rising and will only worsen further as a result of the financial impact of the Covid-19 pandemic. Our own evidence from delivering Aberlour's Urgent Assistance Fund illustrates the stark levels of poverty thousands of families across Scotland are experiencing. Recent research commissioned by Aberlour about the use of the fund highlights that *"there is a level of need across families in Scotland that is really quite fundamental and absolute, and on a higher scale than we have seen for some time."*³

Poverty is an accelerator of many issues for families which can lead to perceived 'neglect', which in fact stems from the toxic and debilitating stress families living in poverty can experience. However, in our experience most poor families are neither abusive nor neglectful. Parents will often sacrifice their own health and wellbeing before their children's, through missing meals in order that their children can eat or purchasing essential items for their children and not themselves. Guidance should enable practitioners to distinguish material deprivation as a result of poverty from neglect. This will ensure action is taken to support families to access financial help and support rather than initiating unnecessary child protection measures.

Q9: Neglect – Recognising that it is a complex area we also include some discussion about whether neglect should be defined as abuse where it is "a consequence of systemic stresses such as poverty."

a) Do you agree with this approach?

To some extent

b) Please provide additional comments.

Continuing to associate 'poverty' with 'neglect' in any context is unhelpful and the guidance should aim to avoid doing so. We believe that explicit guidance to all practitioners operating in the context of rising and worsening child poverty is crucial for how practitioners respond when they encounter families whose needs are significant due to poverty. This can ensure that families who are suffering from poverty and associated issues are not unnecessarily involved in child protection processes when what they need is help and support. Applying a social model of child protection that recognises how economic, environmental and structural issues impact on families' circumstances will allow practitioners to consider need rather than risk. This will enable them to support families to access the help and support – including financial support – they need.

Q10: Pre-birth assessment and support – Part 4 of the National Guidance sets out the context in which action is required to keep an unborn baby safe. Part 3 sets out the processes for this.

a) Do these parts of the guidance clearly and fully set out the context and processes?

³ <https://www.aberlour.org.uk/evaluation-of-aberlour-urgent-assistance-fund/>

To Some Extent

b) If answering To Some Extent or No, please detail why.

For parents with learning disabilities or learning needs there must be specialist assessment and a recognition that long term, ongoing support must be available for those families.

Q11: Specific areas of concern (Part 4)

a) Do all sections of Part 4 of the National Guidance address the specific areas of concern appropriately?

To Some Extent

b) Please let us know any sections you do not think address the specific area of concern appropriately and suggest how these could be improved.

It is helpful within the guidance that each specific area of concern has its own section with contextual information.

‘Disabled Children’

As previously outlined, we recommend changing the term to ‘children with disabilities’, which better reflects a social model of disability in which the barriers created by society are recognised as a cause of disadvantage and exclusion, rather than the impairment itself. A Fairer Scotland for Disabled People⁴ makes clear it is the right of individuals, families and groups to use terms which feel acceptable to them, such as ‘children with disabilities’.

Transitions is an area that for care leavers and children with disabilities enough still isn’t being done to support the young people preparing for or making transitions. In our experience transitions are often rushed and commonly there is not any choice regarding young people’s destination, due to a lack of resources. We recommend the inclusion in the guidance of the Principles of Good Transitions⁵ to help support practice in this regard.

Parents with Learning Disabilities

As previously outlined, we believe the guidance could be strengthened to better reflect best practice for working with parents with learning disabilities or learning needs. This section could be further improved by emphasising the need to get support right for parents with learning disabilities and learning needs in the first instance, from pre-birth onwards.

Parental Mental Health

⁴ <https://www.gov.scot/publications/fairer-scotland-disabled-people-delivery-plan-2021-united-nations-convention/>

⁵ <https://scottishtransitions.org.uk/7-principles-of-good-transitions/>

In addition to children and young people's mental health, there should also be a focus on parental mental health within the guidance.

Contextual Safeguarding

It is positive to see references to contextual safeguarding in the guidance, however the guidance should offer greater focus in promoting an approach to contextual safeguarding. Children in residential care can be vulnerable to sexual exploitation and are often moved as a result, but agencies often fail to address the place, area and context within which they have been harmed. In most instances, perpetrators simply target other children. There needs to be greater collaborative working between agencies and communities to target the places that children are harmed and the people that harm them; instead of targeting the child or building their resilience, which suggests they have the power to prevent abuse. There should also be further information within the guidance to support practitioners – and children, young people, carers and parents – where there is a concern about the risk of a child experiencing sexual exploitation.

Unaccompanied Asylum Seeking Children

The section on unaccompanied asylum seeking children is good and outlines well the context for child protection when working with these children. It is important the guidance reflects a rights-based approach to protecting unaccompanied and separated children to guide practitioners through a complex legal landscape of devolved and reserved legislation. However, in the section on age assessments there should be reference to the Scottish Government's own Age Assessment Practice Guidance for Scotland⁶.

Physical Abuse, Equal Protection and Restraint

This section is useful and covers the main areas of concern providing a clear view of the negative impact of restraint on children. The emphasis that it should only be used to prevent harm is welcome. This section could be expanded further, particularly in relation children with a disability, where it can be common practice for children to be restrained, or for restrictive practice to be used, such as the use of separate rooms or isolation. The Promise is clear that "*Scotland must strive to become a nation that does not restrain its children*"⁷, and this principle should be applied in working towards ending the use of restraint in all circumstances.

'Allegations Against Residential Workers'

We note the 'Allegations Against Carers' section, which insists that local authorities must ensure that protocols for inter-agency investigation of allegations of abuse against carers are in place, and that these same protocols should extend to kinship carers. We suggest that there should be clear direction within the guidance directing local authorities to ensure similar protocols are in place to support children who make allegations of abuse against residential workers.

⁶ <https://www.gov.scot/publications/age-assessment-practice-guidance-scotland-good-practice-guidance-support-social/>

⁷ <https://www.carereview.scot/wp-content/uploads/2020/02/The-Promise.pdf>

Q12: Implementation – The Scottish Government considers that Chief Officer Groups and local Child Protection Committees, supported by Child Protection Committees Scotland, the Scottish Government and a range of other partners, are the key fora for implementation of this Guidance.

a) Do you agree or disagree?

Agree

b) Please explain your answer.

This must include third sector across each of these fora, as not all Chief Officer Groups have third sector representatives. We believe there should also be a priority focus on multi-agency training within each local authority area and this responsibility should sit across Chief Officer Groups and local Child Protection Committees in each area.

Q13: COVID-19 – During the COVID-19 pandemic, it has been necessary to adapt practice to ensure continuity of child protection processes. Learning from the pandemic and examples of best practice will be incorporated into the National Guidance.

a) Are there adapted processes that you would like to see continued?

To Some Extent

b) Please provide further information

The use of virtual meetings has been essential to enable child protection practice to continue, at a time when there has been increasing need. However, this should not become the default for practitioners when it is possible for physical contact and meetings with families to return. The use of digital technology should remain as an important resource which can be utilised when necessary and appropriate. This can be most beneficial to support participation of children, young people, carers and parents in processes and activities where there exists a legitimate barrier to them participating in person.

Q14: Do you have any further comments on the National Guidance?

No.