

Handling Allegations of Abuse made against Adults who Work with Children and Young People

Consultation Response Form

The closing date for this consultation is: 7 August
2009

Your comments must reach us by that date.

department for
children, schools and families

THIS FORM IS NOT INTERACTIVE. If you wish to respond electronically please use the online or offline response facility available on the Department for Children, Schools and Families e-consultation website (<http://www.dcsf.gov.uk/consultations>).

The information you provide in your response will be subject to the Freedom of Information Act 2000 and Environmental Information Regulations, which allow public access to information held by the Department. This does not necessarily mean that your response can be made available to the public as there are exemptions relating to information provided in confidence and information to which the Data Protection Act 1998 applies. You may request confidentiality by ticking the box provided, but you should note that neither this, nor an automatically-generated e-mail confidentiality statement, will necessarily exclude the public right of access.

Please tick if you want us to keep your response confidential.

Name Andrew Fletcher
Organisation (if applicable) National Childminding Association
Address: Royal Court, 81 Tweedy Road, Bromley, Kent BR1 1TG

If your enquiry is related to the policy content of the consultation you can contact Joanne Harker on:

Telephone: 01325 39 1391

e-mail: Joanne.Harker@dcsf.gsi.gov.uk

If you have a query relating to the consultation process you can contact the Consultation Unit on:

Telephone: 01928 794888

Fax: 01928 794 311

e-mail: consultation.unit@dcsf.gsi.gov.uk

Please tick the box that best describes you as a respondent.

<input type="checkbox"/> Employer	<input type="checkbox"/> Service provider	<input type="checkbox"/> Self employed service provider
<input checked="" type="checkbox"/> Voluntary organisation	<input type="checkbox"/> Agency or contracted staff	<input type="checkbox"/> Fostering services
<input type="checkbox"/> Regulatory body	<input type="checkbox"/> Other	

Please Specify:

The National Childminding Association (NCMA) is the only national charity and membership organisation that represents home-based childcare in England and Wales, delivered by registered childminders and nannies, with approximately 43,000 members. We promote quality home-based childcare so that children, families and communities can benefit from the best in childcare and education. Working in partnership with Government, Ofsted, local authorities, children's centres, extended schools and other childcare organisations, we aim to ensure that every registered childminder has access to services, training, information and support to enable them to provide a professional service. NCMA offers to work with all local authorities across England (and Wales). We also aim to ensure that everyone who supports registered childminding has access to the information, training and support they need.

1 Have you got any comments on Section 1 - The Overview?

Yes

No

Comments:

The guidance is intended for “all employers providing services to children and young people” as well as “all adults working with children and young people, whether in a paid or voluntary position”. This will therefore affect all childminders who employ assistants. The guidance refers to all organisations who are members of the Local Safeguarding Children Boards (LCSB) having a named senior officer (NSO) and a senior manager (SM) with specified responsibilities for dealing with allegations. Individual childminders are unlikely to be members of LCSBs. However, if they were, and a parent made an allegation about an assistant to a childminder, it would be difficult for the childminder to carry out the triple role of employer, NSO and SM. At the same time, it is not clear how an employer who is not a member of an LCSB (i.e. most childminders) should deal with an allegation.

Additionally in a setting where there is one person working, such as a traditional childminding setting, there is no senior manager and therefore this needs clarity and addressing within this document. NCMA would urge the Government to recommend that the LADO role is enhanced to support childminders and PVI settings to ensure systems are in place when there is no SM to allow a child to make a complaint about a lone worker. It may also be worth considering contracting out the LADO role for specific providers with unique requirements like childminders and nannies in order for organisations with specialised interest, such as NCMA, to support this vital safeguarding element of handling allegations. This may be a role for a childminding network manager to take on as a Childminder LADO working as a collaborative group sharing information across England.

More specifically point 4 states “organisations” but this needs to focus on individuals as well to include childminders, nannies, foster carers etc. These comments within the guidance relate to the Working Together guidance which did not reflect NCMA’s concerns about their relevance for lone works so still require some clarification in order to address the gaps within Working Together and for LSCBs to develop appropriate processes and systems to support lone workers, like childminders.

Although there is a definition on page 6 of the document identifying Ofsted as the organisation relating to childminders this needs to be clarified earlier within the overview.

2 Have you got any comments on Section 2 - Using the Guidance?

Yes

No

Comments:

NCMA is concerned about the definition of the term “employer” which also includes “regulatory bodies such as Ofsted in the case of child minders [sic]” (page 6, point 6). The difficulty is that, Ofsted is not an “employer” of childminders in the usual sense of the word. Ofsted’s powers relate to whether the childminder remains suitable to be registered, and the sanctions available are to suspend registration, require the childminder to take action to meet registration requirements, issue a compliance notice, vary/ remove/ or impose conditions of registration, or cancel registration. References to an employer (Ofsted) considering whether to suspend an employee, undertake a disciplinary investigation, or dismiss an employee are therefore meaningless in this context and NCMA would urge the Government to reconsider the wording and remove Ofsted from this group under the definition of “employer”.

The guidance states (point 6) that individual organisations may need to adapt the terminology used when applying the guidance to their own circumstances. This could lead to childminders interpreting the guidance in different ways and NCMA feels further clarity is needed on this.

Point 10 specifically outlines the role of the SM within the organisation but this needs to also cover the situation when there is not a SM – for example in a foster carer setting or a registered childminding setting.

3 Have you got any comments on Section 3 - Practice Issues?

Yes

No

Comments:

NCMA would like to make the following specific comments on this section:

Point 15 - this wording and guidance is not appropriate for lone workers such as childminders and nannies and calls into question who should support a lone worker in making judgements especially if they are the one where an allegation has been made? NCMA would urge the Government to produce clear guidance and clarity on this and also to consider how childminders would be supported to carrying out the relevant steps. Of the cases coming through the NCMA feedback process, the most common issue raised has been the lack of support for childminders who are the subject of an allegation. Ofsted will investigate and make limited judgements but is there a conflict of interest here that relates to Ofsted's role as a regulatory body versus the employer role as detailed in the guidance.

Point 23 - in a self-employed, lone-worker setting it must be assumed they will generally be the accused and therefore may not be robust in record keeping. NCMA would seek clarification on how lone workers can get this support and direction.

Point 26 - who else will keep this information and will it be shared, for example if someone was working in a childcare setting but also involved in a local youth group? NCMA feels some clarity is also required on how this information should be made available to lone workers, for example if a childminding business closes, what requirements are there on the childminder to keep the paperwork and for what length of time, etc?

4 Have you any comments on Section 4 - The Process

Yes

No

Comments:

NCMA is concerned that Figure 1 flowchart would imply that all allegations about a childminder should go to Ofsted in the first instance which contradicts the guidance to work with the LADO. There are also concerns about sustainability. Whilst any allegations are investigated by Ofsted, the accused is unable to work, which NCMA supports – however, this could mean a huge impact on the childminder's business if the allegation is unfounded, having been forced to close as their registration was suspended for up to five months and then having to market the business again.

In point 29 the allegation is reliant on a child or parent or colleague making the initial allegation, and in the case of lone workers this may have to be direct to the accused. In addition, we would reiterate the concern about allegations being shared as appropriate with other groups where the accused would be in contact with children and young people. This reinforces concerns about the robust nature of LADOs and also raises questions as to how the process of sharing information would work if the person accused worked in more than one LA or county due to their geographical location near a boundary line – for example they may run a childminding business from their home in one county but run a group such as Brownies in another county.

Point 32 states the allegation should be made to the LADO but in many cases of childminders goes to Ofsted therefore should safeguarding policies state allegations go to LADO and who makes the judgements? NCMA feels there is greater clarity needed in this chapter of the role of LADO and Ofsted and how both are aligned.

The current system does not allow for representation by the lone worker and NCMA questions whether Ofsted is equipped to work within the principles of fact finding and balance of 'probability' (point 62) duty of care to the accused and if Ofsted has to apply this to the lone worker (point 79) this appears to undermines the robustness of the definition of 'employer' earlier in the guidance. In addition in point 79 the guidance refers to the duty of care employers have to their workers under the Health & Safety at Work Act 1974 to manage the stress inherent in the allegations and disciplinary process. Childminders employing an assistant would therefore have responsibility for providing such support. However, although Ofsted is defined as an employer in the guidance the normal employer/ employee relationship does not apply in the case of the Health and Safety at Work Act. This therefore raises the question as to whether and how support should be provided to childminders and NCMA feels clear guidance should be issued on this. NCMA currently provides a telephone support service to its members where childminders who have had an allegation made against them, and parents wishing to lodge an accusation, can contact the organisation. Most parents are redirected to other bodies depending on the nature of the allegation. This service is currently a member benefit for

NCMA members only and receives approximately 100 calls per year. This service is vital as it reiterates the important role that childminders play in supporting children and families, and as part of this they may be privy to children's confidences about issues and allegations against other adults, or observe something they feel needs reporting. There is a need to address the support lone workers may need to be able to do this, particularly live-in nannies.

5 Have you got any comments on Section 5 - Referral to the Independent Safeguarding Authority?

Yes

No

Comments:

NCMA has some concerns around point 85 as to what the outcome would be of a childminder supplying information to the Independent Safeguarding Authority about a medical condition and whether this would lead them to being 'barred' on the ISA lists. NCMA would urge the Government to separate out the requirements around reporting a misconduct and reporting a medical condition to reduce the concerns that the current wording would have for many lone workers.

6 Have you got any comments on section 6 - The Role for LSCBs?

Yes

No

Comments:

7 Have you got any comments on the Annexes?

Yes

No

Comments:

Annex B – pages 34 and 35 there is the need to clarify the role of lone workers who are not Senior Managers and do not have a Senior Manager.

Annex F – This annex mentions the need for advice, assistance and support during the time of an allegation which for childminders would come from Ofsted in line with the guidance. This conflicts with Ofsted's current role in suspending childminders and NCMA would urge further guidance for lone workers on issues regarding representation.

8 Please use this box to provide any other comments about the Guidance.

Comments:

NCMA feels it is vital to ensure that children, young people and their families have the power and knowledge as to how to act if there is an allegation to be made and would urge statutory guidance which directs every childcare provider to give details and policies of procedures for making complaints to every family using the services. In addition, every provider should be linked to a LADO.

NCMA would also be keen to see some guidance issued for providers on how to keep themselves safe in order to ensure they operate in an environment that does not give rise to allegations.

NCMA also feels this guidance is very reactive rather than addressing issues and would urge the guidance to tie in with the new ISA to ensure proactive work to reduce the level of disclosures.

NCMA is concerned that the guidance does not make any reference or arrangements for children with additional needs or disabled children, or for children and families who may need guidance in a language other than English.

Thank you for taking the time to let us have your views. We do not intend to acknowledge individual responses unless you place an 'X' in the box below.

Please acknowledge this reply x

Here at the Department for Children, Schools and Families we carry out our research on many different topics and consultations. As your views are valuable to us, would it be alright if we were to contact you again from time to time either for research or to send through consultation documents?

xYes

No

All DCSF public consultations are required to conform to the following criteria within the Government Code of Practice on Consultation:

Criterion 1: Formal consultation should take place at a stage when there is scope to influence the policy outcome.

Criterion 2: Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

Criterion 3: Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

Criterion 4: Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

Criterion 5: Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

Criterion 6: Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

Criterion 7: Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

If you have any comments on how DCSF consultations are conducted, please contact Phil Turner, DCSF Consultation Co-ordinator, tel: 01928 794304 / email: phil.turner@dcsf.gsi.gov.uk.

Thank you for taking time to respond to this consultation.

Completed questionnaires and other responses should be sent to the address shown below by 7 August 2009

Send by post to:

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