



Consultation Response

Consultation on the revised National Guidance for Child Protection in Scotland 2020

The Scottish Commission for
People with Learning Disabilities
January 2021



Introduction

The Scottish Commission for People with Learning Disabilities (SCLD) welcomes the opportunity to respond to this important consultation. SCLD has engaged in the review of the Child Protection Guidance with a focus on ensuring the strengths and needs of parents with learning/intellectual disabilities were represented in the refresh. As part of this process, SCLD facilitated an engagement session with parents with learning/intellectual disabilities on what they felt needed to be represented in this guidance. We are pleased to see this reflected and to see considerable improvements in this new draft guidance.

We believe the document could still be strengthened by embedding human rights further in the guidance to ensure rights-based practice. To achieve this, we have chosen to focus on the following five key areas for development. These are:

1. The accessibility of the document (Question 1)
2. The legislative and policy developments since 2014 (Question 2)
3. The document's understanding of neglect and risk (Question 8/9)
4. The role of pre-birth assessment for parents with learning/intellectual disabilities (Question 10)
5. Specific areas of concern (Question 11)

Each of these areas is discussed in more detail below:

The accessibility of the document

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?

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

SCLD believes the refreshed guidance has taken steps to improve the accessibility of the document for practitioners. This in the main is achieved by the organising of the document into different topics, which we believe will help those using the guidance be able to quickly access information that is pertinent to them at the time.

While SCLD sees improvements in the document for practitioners, we are clear that this document is not fully accessible. We do recognise that this will be a considerable challenge given the document's professional context. Despite this challenge, more attention needs to be given to how information is presented in this document in a way that aids learning and understanding of those using it and those impacted by it.

Central to improving accessibility will be reconsidering some of the language used in the document. Attention will need to be given to the use of professional terms to ensure explanation is given as well as a consistency of language used throughout the document. To ensure compliance with Articles 9 and 21 of The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)¹ SCLD would ask that this document be supported by an accessible publication for members of the general population. This should explain child protection and the key messages of this document. We believe that supporting accessible public information (including child-friendly versions and easy read) will help to promote understanding and help to alleviate the fear many parents and families have regarding children and families social work intervention (Recommendation 1).

With regard to accessibility and language used in the document, SCLD is cognisant of concerns raised by Aberlour regarding how disability is referred to in the document and whether a '*people first*' approach (for example, a child with a disability) is more suitable. However, we understand the term disabled people has its roots in the

¹[The United Nations Convention on the Rights of Persons with Disabilities \(2006\)](#)

disabled people's movement. We would therefore suggest consultation regarding how disability is referred to in the national guidance with relevant Disabled Peoples Organisations (DPOs) as well as children and young people with learning/intellectual disabilities themselves (Recommendation 2).

The legislative and policy developments since 2014

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? If so, please provide further details.

SCLD is aware of significant developments in legislation, policy, and research since the publication of the 2014 guidance. This includes The Domestic Abuse (Scotland) Act 2018², Children (Equal Protection from Assault) (Scotland) Act 2019³, and The Children (Scotland) Act 2020⁴. Each of these new pieces of legislation will have a considerable impact on child protection as well as the information to which parents and children are entitled.

However, the legislative change which may have the most considerable impact on the guidance is the incorporation of the United Nations Convention of the Rights of the Child (UNCRC)⁵ into Scottish law via the UNCRC (Incorporation) (Scotland) Bill⁶, recently passed in principle by the Scottish Parliament.

²The Domestic Abuse (Scotland) Act 2018

³Children (Equal Protection from Assault) (Scotland) Act 2019

⁴The Children (Scotland) Act (2020)

⁵The United Nations Convention on the Rights of the Child (1989)

⁶UNCRC (Incorporation) (Scotland) Bill

This bill is a landmark piece of legislation that, for the first time, enshrines children’s human rights into domestic law in Scotland. Given the incorporation of the UNCRC and the wider work of the National Human Rights Task Force in Scotland (regarding the potential to incorporate further UN Conventions), SCLD suggests that further attention is given to wider existing human rights legislation and international treaties. In doing this a focus on Articles 19 and 32 of the UNCRPD will be critical (Recommendation 3).

The guidance understanding of neglect

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 behavior 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?

Q9: Neglect – Recognizing 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?

Throughout the review and refresh process for the guidance, SCLD has expressed concerns regarding the 2014 documents' assertion that parental disability would negatively impact children and young people. In particular, we objected to the following statement,

“Disabled parents/carers/siblings may have additional support needs relating to physical and or sensory impairments, mental illness, learning disabilities, serious or terminal illness, or degenerative conditions. These may impact on the safety and

wellbeing of their children, affecting their education, physical and emotional development” (p.119)⁷.

SCLD believes that this statement is inherently discriminatory and does not demonstrate compliance with the Equality Act (2010) and the UNCRPD. We are therefore pleased to see this statement removed from the guidance and are relieved to see that learning/intellectual disability is no longer being directly linked with failure to meet a child’s needs.

To build on this development we would welcome additional emphasis being placed on providing long-term whole family support where needed. For example, supported parenting or family support in instances involving parents with learning/intellectual disabilities, as is legislated for under Part 12 of The Children and Young People (Scotland) Act (2014) (Recommendation 4).

While welcoming the removal of learning/intellectual disabilities as a factor negatively impacting a child or young person, we do have concerns regarding the links now made between the experience of poverty and neglect. We would echo concerns made by Aberlour that further attention needs to be given to *“...the 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.”*⁸ (Recommendation 5). This is of particular significance to families where a parent has learning/intellectual disabilities as we know that these people are frequently excluded from employment opportunities. This can in turn contribute to the experience of poverty⁹.

⁷Scottish Government (2014)

⁸Aberlour (2021)

⁹ Figures from Learning Disability Statistics in Scotland said that in 2019 4.1% of 23,584 people with learning/intellectual disabilities known to local authorities were known to be employed.

In developing the understanding of neglect within the guidance, SCLD would ask that consideration is given to publications that examine the potential of a *'Social Model of Child Protection'*^{10/11}. We believe these texts may help develop practitioners' understanding of how to address issues stemming from inequality, poverty, and multiple deprivation.

By developing a more nuanced understanding of neglect we hope that professionals and practitioners are enabled to support families in accessing financial support rather than unintentionally adding to the misunderstanding of poverty as *"...shameful and a reflection of individual failings rather than of structural inequalities"* (p.8)¹².

The role of pre-birth assessment for parents with learning/intellectual disabilities

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?

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

SCLD is frequently told by parents with learning/intellectual disabilities that their children are removed from their care following birth, without the opportunity to

¹⁰Featherstone et al (2016)

¹¹Featherstone et al (2018)

¹²Featherstone et al (2016)

show or develop their parenting skills. This is supported by the best evidence¹³ which tells us that 48% of parents with learning /intellectual disabilities do not have care of their children and further evidence suggests that many parents with learning/intellectual disabilities are denied opportunities to develop parenting skills because of time pressures¹⁴.

Given this, we believe more detailed information is needed in the guidance regarding support for parents with learning/intellectual disabilities before the birth of their child. This could be achieved by including the potential for utilising specialist disability parenting assessments, for example, [PAMS](#). The guidance must also be clear that any assessment should be followed with flexible and strength-based support which the parents themselves believe addresses any of their identified support needs. Further strengthening could also be given to point 231 (p.171) to ensure practitioners' understanding of the rights of people with learning/intellectual disabilities to have a range of accessible information, to have their views heard, and to have access to independent advocacy (Recommendation 6).

Specific areas of concern

Q11: Specific areas of concern (Part 4)

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

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

¹³Emmerson et al (2005)

¹⁴Both, Both & McConnell (2005)

SCLD appreciates that there may be certain factors that will require additional attention regarding child protection. We are nonetheless concerned that the use of language such as *'specific areas of concern'* does not reflect a human rights-based approach. The proposed language creates the potential for practitioners to believe that parents who represent protected characteristics or who experience situations of vulnerability should be of immediate *'concern'* to children and families' social work. To ensure this is not the case we would ask for a rights-based reframing of the language. For example, *'specific areas of concern'* could be changed to *'factors which may mean a parent or family require additional support'* (Recommendation 7).

Summary and Recommendations

SCLD believes the refreshed guidance shows considerable positive developments from its original 2014 version. As stated, we are pleased to see direct correlations between negative impacts on children and young people of parental disability being removed from the document.

The new and more family-centered approach this guidance takes is evident to us in the inclusion of many of the comments made by parents with learning/intellectual disabilities about what does work and does not work for them. We believe hearing the voices of families themselves in this guidance is a significant step forward and one that is positive, and its impact cannot be underestimated.

We would therefore like to thank those working on the guidance refresh for the opportunity to engage throughout this process and the opportunity to contribute to the practice note on parents with learning/intellectual disabilities. We are also grateful to those working on the refresh for taking time to work with us to hear from parents with learning/intellectual disabilities about their experiences.

To ensure the views of parents with learning/intellectual disabilities remain reflected in the guidance we believe the document would benefit from the implementation of the following key recommendations:

1. A supporting document regarding child protection processes for the general population including child-friendly versions and accessible versions including Easy Read.
2. Consultation with DPOs and children and young people with learning/intellectual disabilities on how disability is referred to in the guidance.
3. The inclusion of wider human rights legislation and international treaties, in particular, the UNCRPD
4. Increased emphasis on the role of supported parenting and family support
5. Separating understanding of neglect which is willful and that which is circumstantial.
6. Inclusion of more detailed information regarding support for parents with learning/intellectual disabilities before birth
7. Rights-based reframing of the language of '*specific areas of concern*'.

SCLD thanks the Scottish Government for the opportunity to respond to this important consultation.

Contact us

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