

4th May 2020

Children's Commissioner's Office response to draft guidance "Covid-19: guidance for local authorities and providers of children's social care"

The Children's Commissioner is grateful for the opportunity to consider and comment on the Department's draft guidance. We have made specific comments in the document shared with us, this document outlines our over-arching concerns.

Concerns about what is in the guidance

Best interests of children

We would like to see the introduction to the guidance re-state the over-arching importance of acting in the best interests of children. At the moment, acting in a child's best interests is one among a set of principles to consider. It should be the over-arching principle, as it is in the Children Act. At present it is not clear whether the guidance is supposed to enable local authorities flexibility in how they prioritise the needs of children, or whether to prioritise the needs of children relative to other demands on local authority services. As written, it appears that a local authority could justify the relaxation of critical safeguards to children by the need to prioritise refuse collection. We think the introduction to the guidance should make it clear local authorities should only be exploiting exemptions to previous statutory duties when they can demonstrate it is in the overall best interests of children within the local authority.

Why exemptions can be employed

We believe the guidance needs to be more specific about when local authorities should take advantage of the various exemptions to previous statutory obligations that they have been provided with. Given these regulations were designed for a situation that was envisaged, but has not materialised (namely, Covid-19 causes severe staff shortages), the Department needs to make clear the continuing relevance of the obligations. In particular, when the guidance talks about giving local authorities 'flexibility', the guidance should be specific as to what. As written the guidance simply affords local authorities flexibility broadly, we think it should be specific to flexibility in meeting the best interests of children.

The guidance states local authorities should be able to demonstrate that they have risk-assessed the decision to use the exemptions provided to them. We think they should go further and state that local authorities should be able to demonstrate how the decision to use the exemptions was taken in the best interests of children within the local authority.

When exemptions can be employed

The guidance states that the regulations will only be in force for as long as needed on a national level. It is not clear whether this applies to local use of the regulations. We believe the guidance should be explicit that local authorities should only use the exemptions when necessary and for as long as necessary.

How decisions on exemptions are made

We are pleased that the guidance demands senior sign-off for exemptions to be employed on a local level. But it is not clear from the guidance whether a local authority has to make a decision to take advantage of the exemptions on case-by-case basis, or across a local authority. For example, would a DCS be allowed to decide that the LA will avail themselves of all the exemptions across the time period? Or do they need to evidence decision making in reference to each child affected? We believe the guidance needs to be much clearer on how decisions are taken in reference to using the exemptions.

The role of Ofsted and IROs

Following on from above, we are pleased the guidance allows the possibility of a role for Ofsted and the IROs. We believe this could be more specific in terms of what information will be shared with them, when (this is particularly important for IROs), and whether the recording of exemptions is shared with them in relation to individual children or corporate decisions made across an organisation. At the moment there are some references to recording decisions – but no clarity about how those will be scrutinised if Ofsted is not inspecting or aware of them.

Outcomes in Children's Social Care

The guidance implies that during this crisis there will be a 'lighter touch' approach to children's social work – with visits being completed purely to check if a child is safe and well and not experiencing harm. This significantly raises the threshold of what social workers do. Many children will be on plans where there are clear actions for families to make progress and improve their children's lives, with support from social workers. This guidance suggests many such plans will not be progressing, or that support from social workers to progress them can stop. This is concerning when it comes to making changes in the timescales which children need. The guidance should be clear that local authorities should only downgrade their ambition for individual children when it is necessary to do so, and explain why.

Suggestion: We believe a lot of these issues could be addressed if the guidance was clearer that local authorities need to clearly evidence which parts of their service are overstretched due to Covid, make a decision at DCS level involving the Principal Social Worker that shows why the exemptions are required and why they are in the best interests of children. For this decision to set a list of which regulations will be discarded, for what time scales, and for which children, and for this information to be given to Ofsted.

What is not in the guidance

The guidance, as written, appears to reflect the needs of local authorities and is premised on an assumption that local authorities may need to do less in support of vulnerable children. It is unfortunate that the guidance does not give greater consideration to the needs of children, and recognise that in some situations local authorities may need to do more to protect children as a result of Covid-19. This is particularly important as we move away from the first peak of Covid-19 infections and transition to a 'new-normal'.

We think guidance rooted in the needs of children would include the following:

A restatement of the broad safeguarding obligations: we are glad that the guidance makes it clear that local authorities retain their responsibilities to the welfare and safety of children. But we think the guidance needs to make this clear that these responsibilities continue to extend beyond those children currently receiving statutory social care. The local authority maintains a responsibility for all children in their local populations, particularly under Sect.17 and Sect. 47 of the Children Act. The Covid-19 crisis is going to impact on the delivering of these functions and we would expect the guidance to be clear that:

1. Local authorities need to consider how changes in health visiting, schools, children's centres, youth services and numerous other services have affected the risks to children within their local populations.
2. Local authorities need to understand what provision is place from statutory partners (eg school welfare checks) and to identify key gaps in provision. They should consider whether they need to reduce their referral thresholds in light of changes in other agencies. (For example, schools normally have a high threshold before referring to LAs as they can maintain contact with a child

and keep a situation under review. Their ability to monitor children is much reduced, therefore their referral threshold should also be reduced).

3. Similarly, local authorities should consider whether they need to change their information sharing protocols. For example, given health visitors are operating a much reduced home visiting services, do children's services need to share more background information? The section of the guidance on data-sharing sets out the correct principles, but is extremely vague and makes no reference to Covid-19, making it of very limited use. Local authorities have been clear to the CCO they want much greater clarity as to how they can share information, and we have repeatedly fed this to back to the DfE. At the very least the guidance should:
 - a. Explain why Covid-19 provides rationale for greater data-sharing, and set an expectation that LAs consider this.
 - b. Specify the different vehicles available for LAs to use when sharing information, including by using the powers in the 2016 Children and Social Care Act. Local authorities have been clear with the CCO that they are not clear under what provision they can share the type of information broadly alluded to in the existing draft guidance.
4. Local authorities should consider whether they need to adjust their thresholds for intervention, particularly around sect.17 of the Children Act, in light of the fact that children with not be accessing support from school or youth services and parents access to health visitors and other services has been diminished.
5. Local authorities should consider how Covid-19 is likely to have had a particular impact at some of their most, at-risk populations and how they need to respond to, for example:
 - a. Care leavers
 - b. Children in residential care
 - c. Children displaying challenging behaviours who were attending special school
(the guidance covers the needs of providers, and seeks to give them flexibility, but not the needs of children, and that they may need extra support)
6. Local authorities should consider how they monitor the safety of children living in families with known risk factors, but who weren't open to children's services at the onset of Covid-19. The DfE's CIN review demonstrated that local authorities are likely to be aware of a population approximately three times the size of their current CIN population. The guidance should be explicit on how local authorities can maintain links to these families and offer non-intrusive support. We would like to see the guidance make specific reference to domestic abuse, present in half the cases open to, and previously open to, local authorities. LAs need to be making provision for children who are families where DA has been known in the past and where children are no longer attending school.