



FLBA response to Improving help and child protection: revised framework consultation

The Family Law Bar Association ('FLBA') is the Specialist Bar Association for the family bar. The Association has approximately 2,200 members, who together comprise a substantial proportion of the practising family bar (2,900 barristers listed family as their main area of practice, according to the Bar Council statistics for February 2025). The FLBA National Committee comprises approximately 60 of those practising family barristers, drawn from all levels of call, areas of practice and geographical regions, and is broadly representative of the membership at large. As such, the Association has a wealth of experience in dealing with cases across the spectrum of family work, both in our members' practice at the bar and for many in their role as members of the fee paid judiciary.

General Observations

1. The FLBA first became aware of this consultation in late August, primarily as a result of the intervention of Jacky Tiotto (CAFCASS). Lawyers, lawyers representative bodies and Family Court judges are not listed in the 'who this is for' section of the consultation. Whilst the consultation is not primarily one which relates to Family Court matters, and the proposals contained within it are largely upstream of the work carried out by our members (there are only 6 references to 'court' in this document), they will inevitably affect our members and their clients i.e. the families and public bodies with whom the consultation is concerned, and are matters in respect of which we are able to offer some constructive insight.
2. The consultation is said to be a part of broader work towards 'whole system reform' and we note the intention of the government to bring forward a Family Justice Strategy in support of this objective. Whole system reform of the Family Justice System must include input from key stakeholders in the court part of that system i.e. of lawyers working in family justice. As long ago as 2011 Sir David Norgrove, in his Family Justice Review, cautioned against 'silo working'. Surprisingly, there

has been an ongoing debate with the Department for Education as to whether Family Court lawyers are ‘key stakeholders’ in the Family Justice System. The lack of any intention, until very late in the day, to consult with us in respect of this consultation exercise provides another example of the DfE’s views in that regard, and it appears to us to perpetuate the sort of silo working that led Sir David to conclude that the Family Justice System was not a system at all.

3. This is not the only consultation or piece of work undertaken under the DfE umbrella in respect of which the Family Law Bar Association has not (initially, at least) been considered a stakeholder (two other examples are the SIHIS pilot and until recently work towards the development of the forthcoming Family Justice Strategy). Whilst the core work of our members may be ‘DfE adjacent’ we do consider that we have something useful to contribute, *and* that our members have a legitimate stake in the work of the DfE on matters that impact upon family justice. We respectfully invite the DfE publicly to acknowledge the error and to affirm that the Family Law Bar Association is a key stakeholder in any family justice matter or family court adjacent matter going forwards.
4. We note the Government’s stated aims to ‘transform children’s social care as part of the Government’s mission to break down barriers to opportunity for all children’. We agree that this is ‘fundamental to ensuring that every child grows up safe, supported and able to thrive, and key to putting our public services, and our public finances, on a sustainable long-term footing.’
5. We are supportive of those objectives, and therefore of the wider work being undertaken to support families before entry into the family justice / court system, and attempts to reduce the demand upon Family Courts. There is much we agree with in the Consultation. Many of the reforms are sensible and progressive, so long as they are properly resourced and implemented. Given the shortage of time we will only highlight within this document the areas which, in our experience, impact directly on the Family Court justice system.
6. For some children, and for some families, recourse to court will continue to be necessary – however successful the Government’s mission may be. Where Public

Law court proceedings are issued, the court is often being asked to sanction removal (i.e. non consensual removal) of children from their parents and sometimes from their wider family members. That removal may be time limited, subject to ongoing review or permanent (i.e. leading to adoption). It is essential in those circumstances that all parties, including parents and children, have access to justice and a fair trial. This is not about introducing or maintaining what we have seen referred to in other documents as an ‘adversarial’ process; it is about ensuring that evidence with the parents disagree is properly and fairly tested within the court process, as it would be within any other limb of the justice system. That evidence to be tested will include allegations of fact that may be advanced by the local authority and are disputed by the parents, but will also include opinion evidence as to the best welfare outcome for the child or children concerned. If a child’s parent or parents, or other identified kinship carer, does not agree with the care plan advanced by the local authority then they must have the right to challenge that plan at a court hearing and to ask questions of the witness or witnesses who propose such a plan to explore and challenge their rationale. They must have access to specialist lawyers who will be able to advise them and undertake those tasks on their behalf. This is what terms such as ‘access to justice’ and ‘the right to a fair trial’ mean in a practical sense.

7. The insights our members can bring in relation to those cases which are not successfully diverted (or which return to court) will be important in identifying what needs to be in place outside of the court system in order to successfully divert, and in order to successfully safeguard without the assistance of a court process.
8. We understand and acknowledge that one of the drivers behind these proposed reforms is to increase the expertise available to local authorities in exercising their child protection functions. That is welcome, but needs to be accompanied by an acknowledgment of why such evidence is not always accorded significant weight within the court process. The reasons are varied but include, in our experience, the inexperience (or even sometimes, lack of ability) of the allocated social worker presenting the local authority’s evidence to the court, lack of time allocated to the allocated social worker to present their written and / or oral evidence to the court, ‘GroupThink’ which may be led by more senior practitioners but which the allocated social worker does not agree with or is unable to articulate, lack of

specialist recourses / time often leading to the local authority seeking to outsource work to Independent Social Workers or other agencies. These problems are by no means universal and we have experience of excellent social work evidence and practice, but for a substantial number of cases these problems are real and cause delay and the introduction of additional professionals to provide higher quality input.

9. In view of the limited time we have had to digest the consultation and prepare a response (during the summer vacation), our response is necessarily short. The brevity of response should not be taken as an indicator of the level of our interest. It has not been possible to prepare a response to all questions posed. We are however happy to expand on any points that we have touched upon in this brief response, in writing or in a meeting, should that be helpful.

Proposed Improvements with MultiAgency Working

10. As a general proposition we are of course supportive of multi agency working as a means of effective safeguarding.
11. Alongside that, we support the need for clear lines of responsibility for record keeping where work is multi-agency, and we foresee a need for some caution to avoid the dangerous consequences of GroupThink, which are so alarmingly highlighted in various inquiries and reviews such as Orkney, Cleveland etc (summarised usefully in *Re P* below).
12. We note in particular the proposals that ‘MACPTs’ should be responsible for providing ‘relevant evidence’ for EPOs, CAOs, care and supervision orders. If that means the production of jointly authored reports or statements, we caution against that. Procedurally, it is critical that evidence is prepared by individuals, and is fact based, and that any account, analysis or proposal is attributable to a named individual. As above, a jointly authored statement or plan is likely to lead to confusion (in understanding who the true author of a statement of evidence is), delay, and the need to call multiple witnesses where such evidence has been co-authored. Such a proposal should only be considered once there has been a full

consultation of those working within the family justice system, including importantly, the judiciary.

The Working Together Guidance

13. This guidance is well known to family lawyers. It underpins much of the social work evidence which then informs decision making in the family court. It is one of the yardsticks against which social work evidence is evaluated. As we have said above, our members, in court, see the product of the guidance when it is working well, and the product of it when it is not.
14. It sits alongside other DfE guidance such as the ‘Keeping Children Safe in Education’ guidance for teachers, which we note was reissued on 1 September this year. Such guidance again has direct relevance within court proceedings. This guidance is in fact inconsistent with the Achieving Best Evidence principles (see CPS Guidance and *Re P*). Although some of the inconsistencies have been removed in the 2026 revision, others remain (https://assets.publishing.service.gov.uk/media/6a9081309a177a1decf97b00/Keeping_children_safe_in_education_2026.pdf). For example, see paragraph 558 which now does say a written record must be taken of the account given by a child to a teacher, but instead of emphasising the importance of recording both questions and answers, it explicitly says only the child’s answers should be recorded. Had we been consulted on this, we might have been able to enable better revisions to be made to the guidance, which themselves would have better supported the safeguarding of children and use of such evidence within the court process further downstream.
15. Issues of best practice in terms of record keeping span across the safeguarding roles of social workers, medical professionals, education professionals and police. Each record as completed by such professionals will be critically important to the building of an evidential picture, leading to sustainable court findings which will ensure children are effectively safeguarded within the family justice system.

The Voice of the Child and Families Proposals (questions 1 and 2)

16. We support efforts to strengthen the voice of children and families in multi-agency work. However, this should not be at the expense of accurate, factual record keeping in respect of key events, and verbatim accounts by children and adults of their experiences (for example through accurate fact-based records of first accounts by children or allegedly abusive experiences). Our members report that a recurrent problem when a family court is determining the truth of serious allegations of abuse is that record keeping will be prepared in a narrative form which captures only the gist of the 'lived experience' as reported by the child (sometimes with a view to being read by the child in later life), rather than providing a primary contemporaneous evidential record of accounts of abuse. This approach can hinder attempts by protective adults to secure findings, and thus protection, because the primary evidence is inadequate. We recommend that the guidance should be strengthened in respect of record keeping, in line with *Re P (Sexual Abuse – Finding of Fact Hearing)* [2019] EWFC 27 and the Achieving Best Evidence Guidance which applies equally to social workers as it does to police officers.
17. Allied to this is a conflict between the sort of training offered by LSPs to safeguarding partners in respect of childrens' accounts of abuse and guidance relied upon within the Family Court, aimed at achieving best evidence and thus facilitating the highest possible chance that safeguarding and welfare based action will be based upon a reliable factual matrix. Our members report professionals such as teachers, social workers and police officers, failing to respond to or document accounts of abuse from children in a way which is consistent with *Re P / ABE* guidance, leading to a risk that true allegations cannot be proved due to poor record keeping or contamination of evidence (for example through praise, affirmation and a culture of explicit 'belief' in 'disclosures').
18. We invite consideration of *Re P* for a comprehensive illustration of where guidance might be clarified and strengthened so as to ensure that safeguarding action can be taken, and will be effective in cases where there are allegations or suspicions of serious sexual or other abuse but which are actively denied by caregiving or other adults involved with vulnerable children.

Family Help, Family Network Support Packages

19. We support any proposals which help to ensure consistent and timely delivery of services to vulnerable families at an early stage. A frequent comment from our members' clients is that they feel that they have received inadequate support prior to initiation of proceedings, and that this lack of support has contributed to the crisis which has ultimately led to child protection court proceedings.

Family Group Decision Meetings ('FGDMs')

20. We are broadly supportive of family group conferences which are well established and well understood by our members. Our members' experience is that there are often difficulties, delays and misunderstandings in setting up such processes / meetings due to a lack of local capacity or difficulties in securing sufficient engagement from parents and their networks. In our view the success of any wider rollout of FGDMs will depend on sufficient resources and personnel to enable the process to swing swiftly but effectively into action at the point when the network is engaged and ready. These meetings must be accompanied by preparatory work so the family members understand the issues facing the family and the options available. They also need to understand that they are not in competition with the child or children's parents, and that the process is about confirming the options and discussing which is likely to be in a child's best interests.
21. The inclusion of the word 'decision' within the title of such meetings implies that this is a forum in which parents will agree to, or will be persuaded to, relinquish care of their children to others, whether family or kinship carers or possibly even foster carers. It is not clear from what we have read what legal advice is to be made available to parents facing such a decision or how the voice of the child is to be heard within such a process.
22. We also observe that for some parents / children, a FGDM is impractical or inappropriate, either because there is no network to bring in, or because the network is the source of significant risk, either to child or caregiving adult (or both). Again,

the FGDM process is a valuable process which can support families and divert from entry into the family justice system / avoid imposed legal orders, but it cannot do so for all families or for all children.

23. We therefore agree with the proposition at q 11.

Reunification

24. We note reference to possible reunification (under supervision orders) following the making of care orders and the risk of return to court following such reunification. We observe that in some areas there has historically been a greater incidence of reunification of a child with parents under the auspices of a care order (e.g. in Wales), and it may well be that this practice continues to a greater degree in such areas than in others. We invite consideration of the Public Law Working Group Guidance on the making of care orders at home (e.g. para 159 “The making of a care order should not be used as a vehicle to achieve the provision of support and services after the conclusion of proceedings” and see also *Re JW (Child at Home Under a Care Order)* [2023] EWCA Civ 944). It is important that proposals to ensure a focus is maintained on reunification are the subject of further dialogue to ensure that there is no inconsistency or tension between approaches.
25. Based on our experiences, once a local authority has secured a final care order, there is unlikely at the present time to be active or meaningful consideration of reunification, unless there is a clear roadmap or list of milestones to be applied actively within the care plan or some other formal document. We say that notwithstanding the existing duty via the IRO to consider whether a care plan continues to be appropriate at each LAC review. We would be hopeful the revised processes proposed would ensure active review but cannot (from our own experiences) be confident it will do so.
26. We do agree that where a LA is considering a reunification a support plan should be provided, and that support plan should have teeth i.e. it should be enforceable in some way. Again the proposal for the care order to be discharged and replaced by a supervision order (if we understand this correctly) at the point of reunification would need careful consideration and dialogue. The PLWG drew attention in 2021,

and then in their bespoke report on Supervision Orders in 2023, to problems with the use of Supervision Orders and regional inconsistency. Best Practice Guidance was drawn up as a result. This highlighted the need to ensure the proportionality and necessity of any order made, alongside the need for detailed planning and resources to be identified. If such a process is to involve the Court – and given the significance of the move for the child we can see the arguments in favour of this – then it will be important to ensure that the parents and the child or children have proper legal representation, and a Children’s Guardian can have input from the perspective of the child.

DATE 4 September 2026

Leslie Samuels KC, Chair

Lucy Reed KC, Vice Chair