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Staffordshire and Stoke-on-Trent Safeguarding Children Board

POLICY FRAMEWORK, PRINCIPLES AND VALUES

JOINT LEGAL FRAMEWORK OF CHILD PROTECTION

Section Staffs A1 / SOT A6

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01 Statutory Framework

All agencies that work with children and families share a commitment to safeguard and promote their welfare. For many agencies this is underpinned by a statutory duty or duties. This document briefly explains the legislation most relevant to work to safeguard and promote the welfare of children.

02 Children Act 2004

Section 10 requires each local authority to make arrangements to promote co-operation between the authority, each of the authority's relevant partners (see the table below) and such other persons or bodies working with children in the local authority's area, as the authority consider appropriate. The arrangements are to be made with a view to improving the well-being of children in the authority's area - which includes protection from harm or neglect, alongside other outcomes.

Section 11 requires a range of agencies (see Appendix 1 below) to make arrangements for ensuring that their functions, and services provided on their behalf, are discharged with regard to the need to safeguard and promote the welfare of children.

Section 12 enables the Secretary of State to require local authorities to establish and operate databases relating to the s10 or s11 duties (above) or the s175 duty (below), or to establish and operate databases nationally.

The section limits the information that may be included in those databases and sets out which agencies can be required to, and which can be enabled to, disclose information to be included in the databases.

Section 13 of the Children Act 2004 requires a range of agencies (see table below) to take part in Local Safeguarding Children Boards. Sections 13-16 set out the framework for LSCBs, and the LSCB regulations set out the requirements in more detail in relation to LSCB functions.

03 Education Act 2002

Section 175 of the [Education Act 2002](#) puts a duty on local education authorities, maintained (state) schools, and further education institutions, including sixth form colleges, to exercise their functions with a view to safeguarding and promoting the welfare of children – children who are pupils and students under 18 years of age, in the case of schools and colleges.

The same duty is put on independent schools, including academies, by regulations made under s157 of that Act.

04 Children Act 1989

Children Act 1989 s17 (1) and (10)

The [Children Act 1989](#) places a duty on councils with social services responsibilities to promote and safeguard the welfare of children in need in their area.

Section 17(1) of the Children Act 1989 states that:

It shall be the general duty of every local authority to safeguard and promote the welfare of children within their area who are in need; and

So far as is consistent with that duty, to promote the upbringing of such children by their families by providing a range and level of services appropriate to those children's needs.

Section 17 (10) states that a child shall be taken to be in need if:

- S/he is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him of services by a local authority under this Part;
 - His / her health or development is likely to be significantly impaired, or further impaired, without the provision of such services, or
 - S/he is disabled.
- The primary focus of legislation about children in need is on how well they are progressing and whether their development will be impaired without the provision of services.

05 Children Act 1989 section 27

Section 27 places a specific duty on other local authority services and health bodies to co-operate in the interests of children in need. It states that:

Where it appears to a local authority that any authority or other person mentioned in sub-section (3) could, by taking any specified action, help in the exercise of any of their functions under this Part, they may request the help of that other authority or persons, specifying the action in question. An authority whose help is so requested shall comply with the request if it is compatible with their own statutory or other duties and obligations and does not unduly prejudice the discharge of any of their functions.

The persons are –

- Any local authority;
- LA education;
- Any local housing authority;
- Any health authority, special health authority, or National Health Services Trust; and
- Any person authorised by the Secretary of State for the purpose of this section.

In addition Section 322 of the [Education Act 1996](#) places a duty on LA children's social care to assist LA education where any child has special educational needs.

06 Children Act 1989 section 47

Under section 47 of the Children Act 1989, the same agencies are placed under a similar duty to assist local authorities in carrying out enquiries into whether or not a child is at risk of significant harm.

Section 47 also sets out duties for the local authority itself, around making enquiries in certain circumstances to decide whether they should take any action to safeguard or promote the welfare of a child.

Section 47(1) of the Children Act 1989 states that:

Where a local authority are informed that a child who lives, or is found, in their area is the subject of:

- An emergency protection order; or
- Is in police protection; or
- Has contravened a ban imposed by a curfew notice imposed within the meaning of Chapter I of Part I of the [Crime and Disorders Act 1998](#); or
- Have reasonable cause to suspect that a child who lives, or is found, in their area is suffering, or likely to suffer, significant harm:

The authority shall make, or cause to be made, such enquiries as they consider necessary to enable them to decide whether they should take any action to safeguard or promote the child's welfare.

In the case of a child contravening a ban imposed by a curfew notice the enquiries shall be commenced as soon as practicable and in any event, within 48 hours of the authority receiving the information.

07 Children Act 1989 section 17 and (5)

Under section 17 of the Children Act 1989, councils with social services responsibilities carry lead responsibility for establishing whether a child is in need and for ensuring services are provided to that child as appropriate. This does not require councils with social services responsibilities themselves necessarily to be the provider of such services.

Section 17(5) of the [Children Act 1989](#) enables the councils with social care responsibilities to make arrangements with others to provide services on their behalf.

Every local authority:

- Shall facilitate the provision by others (including in particular voluntary agencies) of services which the authority have power to provide by virtue of this section, or s18, s20, s23 or s24; and
- May make such arrangements as they see fit for any person to act on their behalf in the provision of any such service.

08 Children Act 1989 section 53

Section 53 of the Children Act 2004 amends both s17 and s47 of the Children Act 1989, to require in each case that before determining what services to provide or what action to take, the local authority shall, so far as is reasonably practicable and consistent with the child's welfare:

- Ascertain the child's wishes and feelings regarding the provision of those services; and
- Give due consideration (having regard to his / her age and understanding) to such wishes and feelings of the child as they have been able to ascertain.

09 Emergency protection powers

There are a range of powers available to local authorities and their statutory partners to take emergency action to safeguard children and these are as follows:

10 Emergency Protection Orders

The court may make an emergency protection order under s44 of the Children Act 1989 if it is satisfied that there is reasonable cause to believe that a child is likely to suffer significant harm if:

- S/he is not removed to accommodation; or
- S/he does not remain in the place in which he is then being accommodated.

An emergency protection order may also be made if s47 enquiries are being frustrated by access to the child being unreasonably refused to a person authorised to seek access, and the applicant has reasonable cause to believe that access is needed as a matter of urgency.

An emergency protection order gives authority to remove a child, and places the child under the protection of the applicant for a maximum of eight days (with a possible extension of up to seven days).

11 Exclusion requirement

The Court may include an exclusion requirement in an emergency protection order or an interim care order (s38A and s44A of the Children Act 1989).

This allows a perpetrator to be removed from the home instead of having to remove the child. The Court must be satisfied that:

- There is reasonable cause to believe that if the person is excluded from the home in which the child lives, the child will cease to suffer, or cease to be likely to suffer, significant harm or that enquiries will cease to be frustrated; and
- Another person living in the home is able and willing to give the child the care which it would be reasonable to expect a parent to give, and consents to the exclusion requirement.

12 Police protection powers

Under s46 of the Children Act 1989, where a police officer has reasonable cause to believe that a child would otherwise be likely to suffer significant harm, s/he may:

- Remove the child to suitable accommodation and keep him or her there; or
- Take reasonable steps to ensure that the child's removal from any hospital or other place in which the child is then being accommodated is prevented.
- No child may be kept in police protection for more than 72 hours.

13 Homelessness Act 2002

Under s12, housing authorities are required to refer homeless persons with dependent children who are ineligible for homelessness assistance or are intentionally homeless to LA children's social care, as long as the person consents.

If homelessness persists, any child in the family could be in need. In such cases, if LA children's social care decides the child's needs would be best met by helping the family to obtain accommodation, they can ask the housing authority for reasonable assistance in this and the housing authority must respond.

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Appendix 1: Key duties of bodies (as detailed in Working Together 2013)

| | CA 2004 s10 (duty to cooperate) | CA 2004 11 (duty to safeguard and promote welfare) | Education Act 2002 s175 (duty to safeguard and promote welfare) and regulations | CA 2004 s13 (statutory partners in LSCBs) | CA 1989 s27 (help with children in need) | CA 1989 s47 (help with enquiries about significant harm) |
|--|---------------------------------|--|---|---|--|--|
| Police authority | X | X | | | | X |
| Chief officer of police | X | X | | X | | X |
| Local probation board | X | X | | X | | |
| SoS re functions in s2-3 of the Offender Management Act 2007 | X | X | | X | | |
| Provider of probation services required under s3(2) OMA 2007 | X | X | | X | | |
| British Transport Police | | X | | | | |
| Prison or secure training centre | | X | | X (which detains children) | | |
| Youth Offending Team | X | X | | X | | |
| NHS Commissioning Board | X | X | | X | X | X |
| Clinical Commissioning groups | X | X | | X | X | X |
| NHS trust and Foundation Trusts | | X | | X | X | X |
| Academies and free schools | X | | X Via regulations made under section 157 of the Education Act 2002 | | | |
| CAFCASS | | | | X | | |
| Maintained schools | X | | X | X | | |
| FE colleges | X | | X | X | | |
| Independent schools | X | | X Via regulations made under section 157 of the Education Act | | | |
| Contracted services | | | X | | | |