

ContactPoint: Consultation on Draft Guidance

Consultation Response Form

The closing date for this consultation is: 27 July
2007

Your comments must reach us by that date.

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THIS FORM IS NOT INTERACTIVE. If you wish to respond electronically please use the online or offline response facility available on the Department for Education and Skills e-consultation website (<http://www.dfes.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 Deborah Cullen
Organisation (if applicable) British Association for Adoption & Fostering
Address: Saffron House
6-10 Kirby Street
London
EC1N 8TS

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

Nigel Dexter 0207 273 4857 (nigel.dexter@dfes.gsi.gov.uk)

or

Richard Mallinson 0207 273 5165 (richard.mallinson@dfes.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@dfes.gsi.gov.uk

Please check one of the boxes that best describes you as a respondent:

<input type="checkbox"/> Child/Young Person	<input type="checkbox"/> Parent/Carer	<input type="checkbox"/> Education-LA Staff
<input type="checkbox"/> Education-School/College Staff	<input type="checkbox"/> Health-PCT/SHA Staff	<input type="checkbox"/> Health-GP/Staff
<input type="checkbox"/> Social Care Staff	<input type="checkbox"/> Early Years and Childcare	<input type="checkbox"/> Local Authority-Other
<input type="checkbox"/> ISA/ContactPoint Team	<input type="checkbox"/> Children's Trust/CYPSP	<input type="checkbox"/> Connexions
<input type="checkbox"/> Youth Justice/Probation	<input type="checkbox"/> Police	Voluntary and X Community sector
<input type="checkbox"/> Youth Services	<input checked="" type="checkbox"/> Representative Bodies/Unions	<input type="checkbox"/> Other (please specify below)

Please Specify:

BAAF is a voluntary organisation but also a membership organisation whose members include local authorities as well as voluntary and independent adoption and fostering agencies. Members of BAAF's Advisory groups, including its Legal Group, which includes lawyers in private practice and those advising local authorities, have contributed to this response.

Accuracy (Chapters 1, 2, 3 & 4)

1 Is the draft guidance sufficiently clear about the importance of accuracy?

Please use the comments box below to say how this can be made clearer:

Yes

X No

Not Sure

Comments:

We believe that those responsible for the concept of ContactPoint have grossly underestimated the complexity of the task of ensuring that information is accurate. While it may be correct to say that all data controllers are bound by the fourth principle of the Data Protection Act to ensure all records are accurate and up to date, it is unrealistic to suppose that in fact records will be consistently or promptly updated. The professionals who hold information are themselves for the most part dependent on the individuals whom the information concerns for obtaining knowledge of any changes. An individual who has only intermittent contact with a service provider will not regard it as a priority to inform the provider of a change of address or circumstances. In addition, with regard to the most vulnerable children and their families, the difficulties will be increased. Not only may they move more frequently (and/or their circumstances change), but in some cases they may be reluctant to share this information with officialdom. In paragraph 4.52, there is mention of the need to follow up discrepancies. We believe that this is one of the areas where the Government has grossly underestimated the amount of work that will be involved in maintaining the database accurately. We note that Paragraph 3.1 says that "data sources cannot be provided with information held in the best view". This will lead to a huge amount of extra work.

Unauthorised Access and Misuse (2.1-2.9, 3.9-3.12, 4.27-4.44))

2 Is the draft guidance sufficiently clear about how unauthorised access to ContactPoint and misuse will be managed?

Please use the comments box below to say how this can be made clearer:

Yes

X No

Not Sure

Comments:

Some of the Guidance is helpful here (indeed it would probably be helpful for some of the professionals in the context of their ordinary work; it needs to be understood that security of computerised records is not as consistently high as it should be). However paragraph 11 needs to be stronger. It would be helpful to have a consistent approach to decisions about individuals for whom offences are shown on the CRB search. Further guidance is needed about the best practice in dealing with proposed users who have spent a period overseas and for whom it is not possible to obtain a complete CRB check. In paragraph 4.32 the word “should” should be replaced by “must”.

Subject Access Requests (3.53-3.57, 4.7-4.16)

3 Is the draft guidance sufficiently clear about an individual’s rights to see information held about them?

Please use the comments box below to say how this can be made clearer:

Yes

X No

Not Sure

Comments:

Paragraph 12 says that documents confirming proof of the relationship with the child should be sought in the case of a parent or carer. What form is it suggested this evidence should take? In the case of, for example, a local authority foster carer, there would be a placement agreement under the Fostering Regulations but for less formal arrangements, for example, a grandmother caring for a child, there might not be appropriate documentation. In the same paragraph, it is stated that in the case of a parent who cannot prove that he or she is resident with the child, legal advice should be sought. While this may be an appropriate safeguard (for instance in alerting the data controller to the possibility that there is a good reason to withhold the child’s address or possibly other information from the parent in question) the situation is more complex than the Guidance acknowledges. The database will hold information about the child and also the names of parents, others with parental responsibility and carers. Any parent is surely always entitled to see what information the database holds about him or herself (for example, a “non-resident” father with parental responsibility may wish to check that the database does include the fact that he holds parental responsibility) but a distinction needs to be drawn between this and a request to see information about the child.

Again, paragraph 4.12 refers to court orders without giving any indication of what sort of court order might exist preventing disclosure to a parent or carer. The sentence on the face of it suggests that information must not be released if any sort of court order has been made against any parent or carer.

Shielded information

Much clearer guidance is needed as to the consideration to be given before any decision is made to release shielded information.

Complaints Procedure

4 Does the draft guidance sufficiently explain how local authorities are required to manage complaints relating to ContactPoint?

Please use the comments box below to say how this can be better covered:

Yes

No

Not Sure

Comments:

We have not responded here since we understand this will be reconsidered in the light of the decision made not to include specific complaints provisions in the regulations.

Shielding (4.63-4.69)

5 Is the draft guidance sufficiently clear about how the 'shielding' of child records will operate?

Please use the comments box below to say how this can be made clearer:

Yes

X No

Not Sure

Comments:

Some of the problems here are with the regulations, not merely the Guidance.

Paragraph 4.64 says that a parent or a child may request that a record is shielded but there is nothing to address the problem that will arise if the user or the ContactPoint manager takes a different view from the child or parent about the necessity for shielding. While we would accept that it should not be automatic for the address of a child in a pre-adoption placement to be shielded, we are concerned that some prospective adoptive parents will be made unnecessarily anxious if their request for shielding is denied. Unfortunately it is likely to be the case that those who have responsibility for the database may not have sufficient appreciation of the particularly sensitive issues that arise in adoption cases. The guidance should encourage local authorities to ensure that their adoption manager has an input into the procedures than at individual local authority draws up. This issue also needs to be addressed in training.

Paragraph 4.65

This paragraph states that when data is shielded, nothing will identify the child's **whereabouts or locality**. The problem with this provision, as with the regulations, is that it does not appear to shield the **name** of the carer or parent (or prospective adoptive parent). In some cases, the identity of the carer will also need to be withheld. This is a flaw in the regulations.

Flowcharts (Annex B)

6 Are the flowcharts helpful in explaining processes within this guidance?

Please use the comments box below to expand on your answer or suggest further processes which may benefit from flowcharts:

Yes

No

X Not Sure

Comments:

Some of the flowcharts are helpful. In B9 however, the flowchart does not mirror the Guidance in paragraph 4.12 which, as we have already mentioned, is insufficient in any case. On the face of the flowchart, a parent with parental responsibility would be able to access the child's record on the child's behalf even if the child had been placed for adoption and the placing agency had restricted the parent's exercise of parental responsibility. Similar difficulties could arise in respect of children in care and children whose carer was fleeing domestic violence.

Contents and Purpose (Chapters 2, 3 & 4)

7 Does the draft guidance cover all the necessary topics to support the appropriate use of ContactPoint?

Please use the comments box below to say which other topics you would like to see covered:

Yes

No

Not Sure

Comments:

There is little to indicate what positive uses the system will be put to. In light of the recent announcement about eCAF, and the proposed facility for agencies to share an assessment with each other, it needs to be made absolutely explicit that the ContactPoint provisions apply only to the statement that a common assessment has been undertaken, and not to the sharing of the assessment itself, which can only be shared with the informed consent of the child and/or parents. Paragraph 3.30 refers to the Common Assessment Framework. It would be helpful to provide clarification as to the link between the Common Assessment Framework and a core assessment undertaken by a social worker.

Local Authority responsibilities (Chapter 4 and 'ContactPoint Management Team' boxes)

8 Is the draft guidance sufficiently clear about the statutory responsibilities of local authorities?

Please use the comments box below to say which topic(s) should made clearer:

Yes

No

Not Sure

Comments:

Consideration is needed of the way in which local authority departments other than children's services will contribute to the system. The regulations require 'the local authority' to disclose information for inclusion in the database, and housing and other departments of the local authority may have information about children. Is separate guidance also to be issued to those who are required to contribute to ContactPoint but will not have primary involvement. What other guidance is to be issued to other organisations such as the police and health authorities/professionals, and independent schools?

Supporting Practitioners (Chapter 3 & 4.53-4.81)

9 Is the draft guidance sufficiently clear about how ContactPoint will support practitioners working with children?

Please use the comments box below to say which topic(s) should made clearer:

Yes

No

Not Sure

Comments:

Perhaps in its determination to underline the security aspects of the database the Guidance overall concentrates on the responsibilities of users and their managers and pitfalls they must avoid and has very little to say about the way in which the system will actually act as a support for practitioners. There is very little said about the circumstances in which it might be useful for a practitioner to access the database. After all, if a practitioner has contact with a child and his or her parent, the simplest way of obtaining information about other services that may be involved is first of all to ask the parent themselves.

Implementation (1.1-1.16, Chapters 2, 3, 4)

10 Do you foresee any challenges arising from implementing ContactPoint using this guidance?

Please use the comments box to let us know what you think these challenges might be and how they might be resolved:

Yes

No

Not Sure

Comments:

Please see our introductory comments. The challenges of adequate training, and of providing appropriate information to families and children about the database, are immense. It needs to be understood that many local authorities are already struggling with the implementation and use of other electronic systems such as the ICS, and that, despite attempts to address the issue, understanding of the effect of the Data Protection Act is often imperfect.

User Groups (1.13)

11 Is the use of colour-coded, user-specific, guidance helpful for readers? (Definitions of users can be found in the table at 1.13 in the guidance)

Please use the comments box below to identify users that you think should be covered by the guidance or if you feel the guidance could be formatted in a more helpful way:

Yes

No

Not Sure

Comments:

General Comments

12 We are keen to know your views and welcome any further general comments that you might have on this draft guidance; this can include the format, content and language used.

Comments:

Please see our preliminary comments.

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 Education and Skills 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 UK national public consultations are required to conform to the following standards:

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

Further information on the Code of Practice can be accessed through the Cabinet Office Website: <http://www.cabinetoffice.gov.uk/regulation/consultation-guidance/content/introduction/index.asp>

Thank you for taking time to respond to this consultation.

Completed questionnaires and other responses should be sent to the address shown below by 27 July 2007

Send by post to:

ContactPoint Guidance Consultation
ContactPoint National Project
Department for Education and Skills
Westminster Suite
Caxton House
6-12 Tothill Street
Westminster
LONDON SW1H 9NA

Send by e-mail to: ContactPointGuidance.Consultation@dfes.gsi.gov.uk