

Independent Reviewing Officers Draft Guidance and Regulations

Joint Consultation Response from BAAF and FRG

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Introduction

BAAF and FRG are signatories to a joint response by a number of stakeholder organisations and individuals. In addition to the points made in that response, we wish to make the following comments. These have been largely influenced by discussion in BAAF's Legal Group Advisory Committee which includes local authority legal advisers, lawyers in private practice with experience of representing children, birth parents and adopters, and children's guardians.

Decision making for looked after children and limits of the IRO's role

The draft guidance lacks clarity about **who** makes decisions about a child's future, and **when** the decision is actually made. Clearly it is the agency's responsibility to make all decisions about any child they are looking after, but because of the IRO's responsibility for chairing the review meeting (at which, according to paragraph 2.1 of the draft, decisions will be made about action to be taken) it may sometimes appear that the IRO makes the decision. This clearly cannot or must not be the case, since his or her independence would be compromised, and he or she has no control over the resources to be allocated. Nevertheless, clearly the IRO does have a responsibility to try to ensure that decisions **are made and implemented**, since IROs are important agents in preventing drift for children. In some circumstances a decision *that a decision must be made* may appear itself to **be** that decision.

The best way to address this lack of clarity would be for whole of the Review of Children's Cases Regulations 1991 to be revised setting out clearly all stages of the review function and process, with particular attention being given to identifying and distinguishing the roles of agency decision-makers and IROs. Clearly such a revision may not be possible immediately, but in our view should be on the government agenda in the near future.

In the meantime it would be helpful for the guidance in chapter 2 to expand on, and be more precise about, the nature of the IRO's role in the existing regulatory framework, otherwise the current confused practices regarding decision-making, in which IROs often become entangled, will persist, thereby defeating the object of their involvement. It is also important to emphasise that the "collaborative partnership" referred to at the bottom of page 19, in order to be fruitful, requires appropriate action by the management of the local authority in response to concerns raised by the IRO.

Participation of children, parents, family members and other relevant adults:

The statement "The IRO will ensure that all those involved in the meeting make a meaningful contribution" (paragraph 2.1) is not sufficient. As well as ensuring participation in the discussion within the meeting, a key part of the IRO's role is to check that the proper processes have been followed to enable the views of all relevant people to be presented. BAAF's Legal Group Advisory Committee have seen far too many examples of cases where the views of parents or other birth family members, or even the child, have not been effectively presented in a way that ensures it is their views rather than the interpretation of their views by others, which are expressed at the review. This is not helped by the fact that the views of parents and family

members are ascertained *prior to*, rather than at, the review, which occurs frequently. Whilst this is permissible, according to the 1991 Regulations, and may sometimes be

unavoidable, or in accordance with the child's wishes, in the light of recent case law¹ under the Human Rights Act 1998, any exclusion of parents (and relevant family members) at review meetings may be considered unlawful.

The IRO has a key role in ensuring that the process of planning is both fair to participants, and child-focussed. Given that it is frequently very difficult for non-professional review participants to contribute effectively, and to be made to feel that their views are important, the guidance should explicitly require IRO's to:

1. arrange for the relevant participants (children, parents and relevant family members) to be invited to the review;
2. note the reasons if they do not attend; and
3. assist them to contribute to the review from an informed position by referring them to independent advice and advocacy services².

The government's guidance on child protection procedures in *Working Together* has placed similar requirements on the chairs of case conferences; it would be contrary to the spirit of the Human Rights Act to omit such requirements in the review process.

Recording and monitoring

Since the IRO, as chair of the review meeting, cannot be the local authority decision maker, and it is unlikely in the majority of cases that the person or persons with authority to commit resources to implementation of the care plan will actually be present at the review meeting, there needs to be a robust and speedy system for recording the conclusions of the meeting. These should include dissenting views, so that those who are responsible for endorsing the review's conclusions, and agreeing and committing the necessary resources, are able to make a timely decision.

If the resources are not forthcoming, or other important aspects of the review's recommendations are not upheld, the IRO needs to be informed immediately, so that he or she can direct an early review meeting to consider an alternative plan. It is not sufficient, and can be a source of damaging delay, to allow matters to rest until the next scheduled review.

The summary of the key conclusions of the review, with reasons, and any dissent, therefore needs to be recorded **at the meeting**, and agreed by those present; not only may it cause unacceptable delay to await lengthy minutes, but, once the meeting has been disbanded, there is no easy mechanism for agreeing the record. It needs to be clear from this record what the parents' views are, or, if no views of theirs are noted, why this is so. The full minutes should be circulated to all those present within 14 days, for their agreement.

¹ **Re M** (Care: challenging local authority decisions) [2001] 2FLR 1300, **Re L** (care: assessment: fair trial) [2002] 2FLR 730, **Re G** (care: challenge to local authority decision) [2003] 2FLR 42

² Good practice is currently being promoted in relation to advice and advocacy for children and families (see, for example, National Standards on the Provision of Children's Advocacy (2002) on www.doh.gov.uk/childremsadvocacy, and Protocol on Advice and Advocacy for Parents (2002) on www.doh.gov.uk/qualityprotects or www.frg.org.uk).

The role of the local authority legal department

In cases where there are ongoing court proceedings, and in any case where there is disagreement between the professionals involved in the case about the appropriate way forward, it will be important to involve the local authority legal department. The authority's monitoring officer will usually be located within the legal department, and needs to be involved in any attempts to resolve differences of opinion, as does, clearly, the senior child care lawyer within the legal department.

Methods of resolving disputes

In addition to the possible courses outlined in chapter 5, consideration should be given in appropriate cases to a referral to independent and impartial mediation services. Drawing on other European models in which negotiation between family and State plays a much greater part in planning for children who are looked after or receiving services from social services, the use of independent mediation in reviews is already being piloted in Nottinghamshire social services³. The key referral agency for engaging independent mediators is the UK College of Family Mediation (www.ukcfm.co.uk), some of whose members are beginning to extend the remit of their work beyond private family cases to dispute resolution in relation to child protection, care and adoption cases.

**BAAF and FRG
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³ For further information on the use of mediation by IROs to assist in resolving pending disputes, see Cooper, A, Hetherington, R and Katz, I, 2003, *The Risk Factor, Making the Child Protection System Work for Children*, (2003 Demos), or call Bridget Lindley FRG 0207 923 2628.