The legal and policy framework for Contextual Safeguarding approaches

A 2020 update on the 2018 legal briefing

Carlene Firmin and Rachel Knowles

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IASR | INSTITUTE OF APPLIED SOCIAL RESEARCH

University of Bedfordshire

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RESEARCHING CHILD SEXUAL EXPLOITATION, VIOLENCE AND TRAFFICKING

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Introduction

Compared to earlier childhood, during adolescence young people are increasingly exposed to harm that occurs in extra-familial contexts such as schools, high streets, parks and transport hubs (Brandon, et al., 2020; Firmin, 2017a; Foshee, et al., 2014; Hill, 2019; Lloyd, 2018) . This harm often happens in a young person's extra-familial relationships – such as with peers[1] (Barter, et al., 2015; Cowie, 2011; Firmin, 2017b; Johnson, 2013; Smallbone, et al., 2013) and adults unconnected to their family (Brandon, et al., 2020; Jay, 2014) that form online and offline. Peer, and other forms of extra-familial, relationships grow in importance during adolescence more generally – and can act as a source of support and protection for young people during this period of development (Blakemore, 2018; Cossar, et al., 2013; Latimer, et al., 2020; Murray, et al., 2016). For all these reasons, agencies tasked with safeguarding the welfare of young people need to engage with extra-familial contexts and relationships, as well as parents and carers, when responding to (or seeking to prevent) harm beyond families.

Since 2013 local areas in England have worked with the University of Bedfordshire (UoB) to design and test ways of delivering a contextual approach to harm in extra-familial settings/relationships. In 2017 UoB worked with the London Borough of Hackney to test the first full system implementation of a Contextual Safeguarding approach, and since that time a further nine test sites have been established – alongside a network of a further 32 local areas who are developing this approach outside of formal testing and an online practitioners network of 8,000+ professionals. All of their efforts have contextualised safeguarding practices at two levels. At one level practitioners, and system leaders, and sought to foreground extra-familial contexts more readily as children and families move through children's services – including early help, social care and youth justice services (e.g. undertaking safety mapping with a young person as part of an initial assessment process to identify locations of safety and harm). At a second level, they have developed ways to identify, assess and intervene with extra-familial relationships and contexts themselves (e.g. undertaking assessments of locations where multiple young people have come to harm).

This briefing considers the extent to which changes made to Working Together to Safeguard Children in 2018, and the existing legislative underpinning that guidance, provide a sufficient policy and practice framework for adopting a Contextual Safeguarding approach. It presents the key messages that emerged from a legal roundtable held in 2020, alongside emergent data from the Contextual Safeguarding programme. This combined evidence base is used to make recommendations for how the existing legislative framework can be used to underpin a Contextual Safeguarding approach, if statutory guidance is amended to communicate the pathway for how this can be achieved.

Briefing structure

This briefing is organised into five sections as follows:

- Section 1: Background to the briefing: outlines the framework and values of a Contextual Safeguarding approach, and the research projects/dataset upon which this briefing is built

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[1] For the purposes of this briefing we use the definition of 'peer' employed by Latimer et al. 2020, to describes a relationship between two or more young people. These young people will be similar ages, and have a social connection of some kind. Although, according to this definition, both these conditions are necessary, it gives scope for relative closeness/distance of age and social relationships – but we acknowledge some networks may also feature adults unconnected to young people's families

- Section 2: Practical implications of a Contextual Safeguarding approach: details similarities and variations across local areas who are using a Contextual Safeguarding approach. Similarities are used as a benchmark against which to assess the existing policy and legislative framework
- Section 3: Elements of statutory guidance and underpinning legislation: identifies who existing policy frameworks support the practices detailed in Section 2
- Section 4: Policy insufficiencies: details where existing policy frameworks may require reform
- Section 5: Recommendations: outlines how to adapt statutory guidelines in ways that would support or enable a Contextual Safeguarding response to extra-familial harm

Background and data

When developing a Contextual Safeguarding response to extra-familial harm, local areas have sought to operationalise four domains of a Contextual Safeguarding Framework (Firmin, et al. 2016; Firmin, 2020) to create systems which:

- **Target** the contexts (and social conditions) associated with abuse (Domain 1)
- **Uses a child protection/welfare legislative framework** (of which community safety approaches may be a part) to develop responses to extra-familial harm (Domain 2)
- **Feature partnerships** between children's services and young people, parents, wider communities along with the range of agencies who have a reach into the places and spaces where extra-familial harm occurs (Domain 3)
- **Measures the contextual outcomes** of its work – and the change it creates in public, education and peer settings, as well as for individual children and families (Domain 4)
(The Contextual Safeguarding Framework)

A set of values underpin this four part framework (Firmin, 2020; Firmin and Lloyd, 2020; Wroe, 2020). Contextual Safeguarding approaches are:

- **Collaborative:** achieved through collaboration between professionals, children and young people, families and communities
- **Ecologica**l: considers the links between the spaces where young people experience harm and how these spaces are shaped by inequalities
- **Rights-based**: rooted in, and seek to protect, children's rights and human rights
- **Strengths-based**: builds on the strengths of individuals and communities to achieve change
- **Evidence-informed**: grounded in the reality of how life happens. Proposes solutions that are informed by the lived experiences of young people, families, communities and practitioners

Local areas have designed their versions of a Contextual Safeguarding approach within this four part framework and upon this value-base. This briefing therefore considers the extent to which safeguarding legislative and policy frameworks support their efforts.

Dataset underpinning this briefing

This briefing draws together emergent learning from four projects in the Contextual Safeguarding programme which have raised questions about the legal framework for safeguarding young people abused beyond their families.

1. **Contextual Safeguarding Scale-Up project (National and London**): a multi-year project to document the testing of Contextual Safeguarding in nine local areas in England and Wales. Data has been collected via:
   - Dip-sampling of case records to understand social work decision-making in cases of extra-familial harm following assessment (n=92 at the time of writing)
   - Observations of meetings where individuals cases of extra-familial harm or associated thematic concerns are discussed – often in a multi-agency forum (n=48 as of July 2020)
   - Observations of practice/team meetings (n=28 at the time of writing)
   - Strategic meetings with task and finish groups or project oversight groups (n=10 at the time of writing)
   - Interviews and focus groups with practitioners involved in responding to, or preventing, incidents of extra-familial harm (n=91 at time of writing)
   - Documentary review: local policy/strategy, 'threshold' documentation, information sharing agreements, assessment frameworks, etc. (n=33 as of November 2019)
   - System reviews to track progress and identify opportunities/barriers for development (n=10 at time of writing)
   - Young people and parents engagement – commencing in 2020 to gather their views on contextual approaches to assessment and support (n=12 surveys returned at point of writing)

2. **Contextual Safeguarding in Hackney**: a project to document the first attempt at a full systems implementation of Contextual Safeguarding in the London Borough of Hackney. Data was collected via:
   - Dip-sampling of case records to understand social work decision-making in cases of extra-familial harm following assessment and the extent to which contextual factors are recognised, weighted *and* addressed (n=67 at the time of writing)
   - Observations of meetings where individuals cases of extra-familial harm or associated thematic concerns are discussed – often in a multi-agency forum (n=20 by March 2020)
   - Interviews and focus groups with practitioners involved in responding to, or preventing, incidents of extra-familial harm (n=30 by March 2020)
   - Documentary review: local policy/strategy, 'threshold' documentation, information sharing agreements, assessment frameworks etc. (n=6 core documents development by March 2020)
   - System reviews to track progress and identify opportunities/barriers for development (n=10 by March 2020)

3. **Contextual Safeguarding Local Area Interest Network**: a virtual network of 45 local areas in England and Wales who are strategically committed to developing a Contextual Safeguarding approach to extra-familial harm. A sub-set of the network meet as part of a Local Area Implementation Group to discuss lessons from implementation to date. Data has been collected via:
   - Survey of network members to identify priorities for development and support in 2020 (n=38)
   - Online application forms to join the interest network submitted in 2019 and 2020 (n=24)

4. **Securing Safety**: a study into the rate, cost and impact of relocating young people in response to extra-familial harm. Data has been collected via:
   - Survey returns from 13 local areas documenting their use of relocations (out-of-area placements and secure placements) due to extra-familial harm in the month of September 2019

- Semi-structured interviews (n=15) with professionals from local areas who completed the aforementioned survey, and two areas who were unable to make a survey return. Interviews gathered professional perspectives on their ability to record and report the rates of relocations and their rationale for using this form of intervention in response to extra-familial harm.

Learning from these projects is framed with reference to the key arguments made at a Contextual Safeguarding Legal Roundtable held in July 2020 (attendees listed in appendix A). Co-authors of this briefing participated in the 2020 legal roundtable and draw on their reflections from that event, and their wider practice and policy experience, in constructing this briefing.

Contextual Safeguarding in practice: commonalities and variation

As outlined earlier in this briefing, Contextual Safeguarding is an approach rather than a practice model. As such, local areas have interpreted the four part framework in various ways – which reflect their local demographics, operational frameworks, partnerships and so on. Throughout these variations four common activities have emerged (Firmin, 2020) which characterise practice attempts to consider (and address) extra-familial contexts when supporting children and families, and assess and intervene with contexts themselves.

Commonality 1: Context Weighting and Context Interplay

In all local areas practitioners are using techniques to explore how different contexts impact/influence each other when assessing the needs of young people, their families and extra-familial spaces. In short, they are examining 'Context Interplay(s)'. During these exercises they record the direction(s) of influence between contexts and impact this has on a young person's life (see Figure 1 as an example). In terms of families, a critical element of this work is assessing the relationship between the extra-familial contexts and the influence/capacity of a parent to care for, and protect, their child. And further to this – the extent to which factors within the family home exacerbate issues external to the family home.

In this example overcrowding at home means the young person spends a lot of time out in public spaces. When in those places, the young person is experiencing robbery and violence. These violent incidents impact the behaviour of this young person, and many others in school. The inability of the school to respond effectively further normalises violence amongst peer groups at the school. These peer groups have more influence over the young person's behaviour than their parents – and impacts the capacity of the parents to safeguard their child from the harm they experience in (and the pull of) public and peer spaces
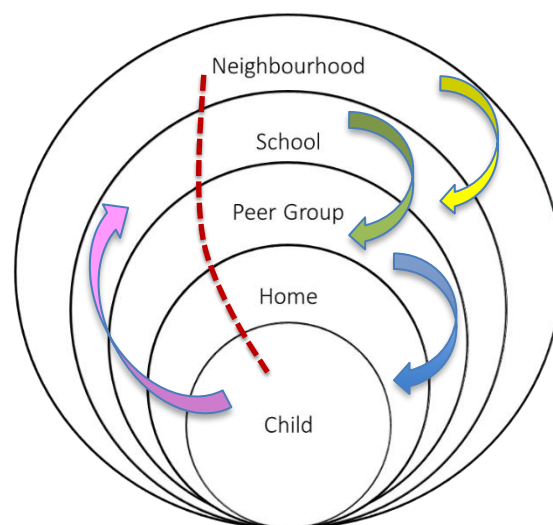

Figure 1 Context Interplay Example

In order to reach conclusions about the influence of context interplay on a young person's welfare, practitioners have to 'weight' the influence that a context has on other contexts and on a young person's situation. They may ask:

- Which context is the one in which the risks in question – i.e. the sexual exploitation – is most strongly associated?

And/or

- Which context is likely to have the most influence of this young person's decisions, thoughts and feelings?

Both questions are relevant to the task of 'Context Weighting'. It is important for professionals to understand the extent to which safety/protection and risk/harm are evident in any given setting. They also then need to understand which of those contexts is most influential in terms of the young person they are working with. For example, a young person's home environment could be largely safe and protective – but will have little influence on the decisions a young person makes when travelling to school each day as safety at home won't necessarily influence safety on a bus. A young person's peers may, or may not, be in a better position to influence safety on the school journey. Or for some young people's peers what happens on the bus feels beyond their control and is influenced by the behaviours of adults who use the bus, the attitude of the bus driver to them as a group of young people on the bus, the areas the bus travels through and so on.

Practitioners have used visual representations of contexts that feature in cases to weight their influence on a young person's safety and use it to focus attention on the context(s) which most require intervention. For example, in Figure 2, the school environment was the most influential context followed by a young person's peer group (some of whom attended that school). The school and the young person's peers therefore were prioritised in terms of support and intervention – with a recognition that the actions taken by the family, and factors in the neighbourhood, were less influential in this case.
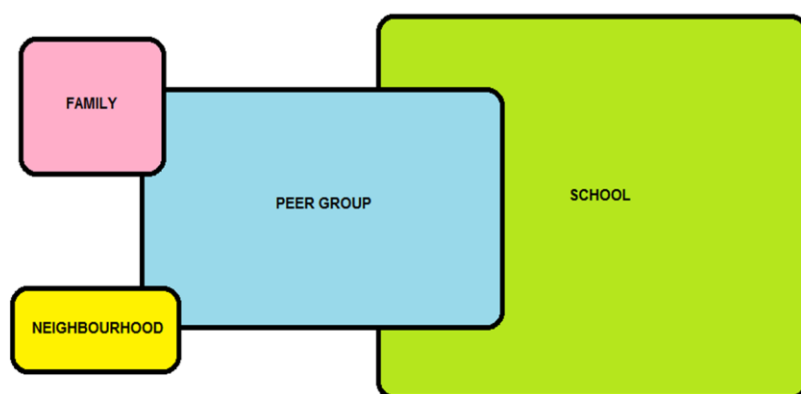

Figure 2 Context Weighting Example

The assessment tools that practitioners have used to explore 'Context Interplay' and 'Context Weighting' have varied – and have been aligned to the local operating models of choice. Some practitioners have also drawn upon resources on the Contextual Safeguarding network to contextualise, or provide prompts for how to use, their existing assessment methods. In this working with 'Context Interplay' and 'Context Weighting' isn't a specific practice model – it is an activity common across a range of practice models that have been used to organise local responses to extra-familial harm.

Commonality 2: Broadening capacity to safeguard

The same can be said about a broadening conceptualisation of assessing the capacity of adults to safeguard young people. Traditionally social work assessments have focused on the capacity of parents/carers to care for, and protect, their children. When developing a Contextual Safeguarding approach, practitioners have broadened whose 'capacity to safeguard young people' falls within assessment. The adults in scope are those who have a reach into, or responsibility over, the context(s) in which young people have been harmed.

In this sense the idea of 'capacity to safeguard' is extended in two ways. Firstly the capacity of adults beyond a young person's parent/carer is 'in-scope' if a young person has been harmed in a context under their responsibility or in their reach. Secondly, their capacity to create safe spaces, or increase safety in a context, is what is under assessment – as opposed to their direct relationship with an individual child. To achieve this, practitioners are asking:

- Whose capacity to create safety in this context is being undermined?
- What/who is undermining their capacity? (Design/lighting features that create opportunities for harm to go unseen; social norms; poor relationships between adults and young people in the space, etc.)

For example – a young person is stabbed in a park. The idea of 'capacity to safeguard' is used to assess the role(s) of adults who work in, use or have a presence in that park; the gardeners; youth workers; police or community safety officers; dog walkers; teachers from the local schools, and so on. What is their collective capacity to build safety in the park? If their capacity is limited – what is undermining it – and how might they work alongside young people and other residents who use the park to identify ways of building a sense of safety, and community guardianship in the park in the future? This isn't about any of those adults assuming responsibility for the individual young person who was stabbed in the park. It is about them building their collective capacity to build a safe space in the park, and reduce the opportunities for violence in that space in the future.

Commonality 3: Safe spaces being 'everyone's responsibility'

Activities that broaden the idea of 'capacity to safeguard' require that it's everyone's responsibility to create/sustain safe spaces for young people. Safeguarding is not solely about individual agencies referring concerns about children and young people into children's social care. It is also about those same agencies working alongside children's social care to build safe spaces for young people. For example, in one test site concerns were raised about a group of young people who had shared a sexually indecent image of a peer with other students at the school. As assessment of what had happened in this case suggested that the norms within their school environment, the confidence of school staff to manage allegations made by young people about online sexual harm, and the school's e-safety policy all required attention. The response to the incident was to build the capacity of the school leadership, staff, and students to create a safety school environment. The plan to achieve this involved a bystander intervention project with staff and students, a revision of school policies and support for school staff to develop a more consistent approach to disclosures. This response wasn't to hold any school staff responsible for the individual young people who had shared the initial image; but the response did recognise the collective responsibility of many to address the context in which the image of shared (and in which such sharing had been normalised).

Commonality 4: Context mapping and assessment

To reach the above conclusions about the school environment, practitioners in the aforementioned case first undertook a peer assessment with the group of young people

involved in the incident, and later an assessment of the school environment itself. Practitioners from a range of local areas have started to assess peer relationships and public spaces where extra-familial harm has occurred – to inform intervention plans that build safety in extra-familial contexts. As with all other activities listed thus far, areas have drawn upon their existing (and varied) operating models to undertake context mapping and/or wider context assessments. The approach to context assessment, in this sense, has varied. But the need to do context assessments has been universal.

A number of sites have also required further support to devise consistent assessment frameworks for extra-familial contexts. In the absence of national guidance around an assessment framework for peer groups, for example, the research team have worked with areas to build upon their existing approaches/tools – and built broad frameworks for peers and extra-familial contexts that mirror a child and family assessment (Figure 3). These efforts were in the absence of an alternative, and a regular request for further support in this area of practice.
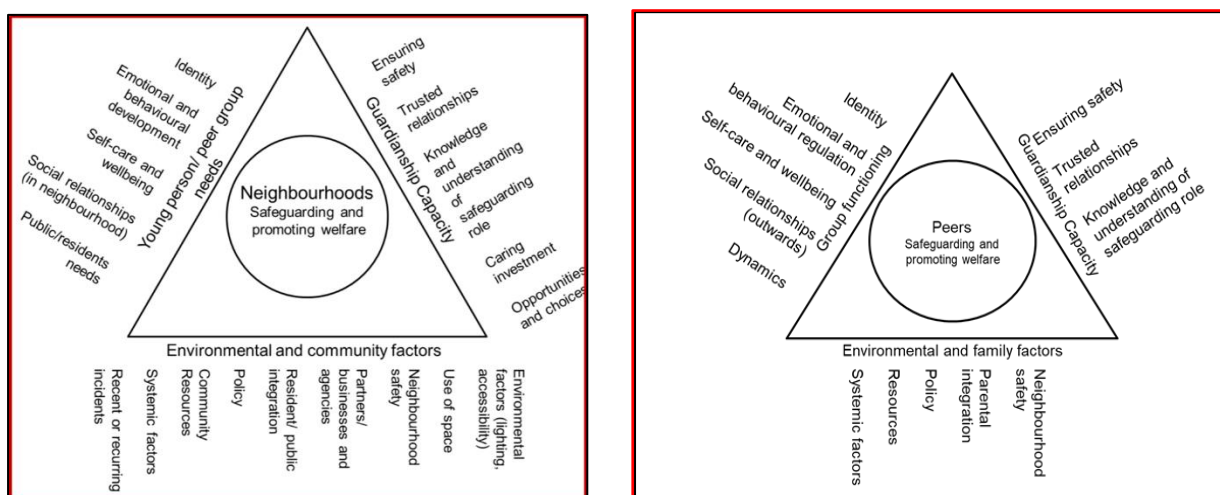

Figure 3 Neighbourhood and peer assessment frameworks

Local variation

Local areas who are developing a Contextual Safeguarding approach have all undertaken exercises to: assess and work with Context Interplay and Context Weighting; broaden how they understand 'capacity to safeguard'; promote that safeguarding being 'everybody's responsibility' is about the creation of safe spaces (in addition to making referrals and sharing information); assess peer relationships and extra-familial contexts in order to build support plans. Where they have varied is in the system scaffolds they have used/created to hold these practices.

Devon, Wiltshire and the London Borough of Hackney serve as three useful examples. The London Borough of Hackney started to develop its Contextual Safeguarding approach, in partnership with the University of Bedfordshire, through a social care innovation grant in 2017. Wiltshire started to consider adopting a Contextual Safeguarding approach in 2018 and became a formal test site as part of the University of Bedfordshire Contextual Safeguarding Scale-Up project in 2019. Devon started to use the Contextual Safeguarding framework to inform their response to extra-familial harm in December 2019, titled the Adolescent Safety Framework. Devon drew on resources from the University of Bedfordshire when designing their approach and sit on the Contextual Safeguarding local area implementation group – but they are not a formal test site.

As the table below details, each area has created different structures, meetings, referrals pathways and teams to respond to contexts, and support young people affected by extra-familial harm.

	Hackney	Wiltshire	Devon
Discrete team oversees extra-familial harm	No	Yes	No
Discrete team oversees responses to groups and contexts	Yes – within youth service and early help which are part of children's services	Yes – within young people's service (edge of care, exploitation and youth justice offer)	No – locations with community safety, schools with education and social care oversee peer/ individual responses
Pathway to identify and refer contexts associated to extra-familial harm	Referred into the multi-agency safeguarding hub – front door service	Identified via community mapping meetings with schools or referred into the front door	Referred in via multi-agency assessment document into the Exploitation Hub, within the MASH. Framework is integrated across early help and statutory responses
Operational meetings to oversee cases of extra-familial harm	Extra-familial risk panel	Vulnerable adolescents risk management meeting	Locality MACE meetings (4 areas) & Partnership Exploitation Subgroup
Meetings to review the findings of context assessments	Context Conferences	Vulnerable adolescents contextual safeguarding panel	Context Conferences
Contextual approach embedded in child's pathways through social care	Yes	Yes	Yes
Pathway created for contexts	Yes	Yes	Yes
Specific consideration given to a pathway for young people at risk of harm in extra-familial contexts while living in safe familial contexts	Yes	Yes	Yes
Partnerships built around welfare plans for groups and contexts as well as individual children	Yes	Yes	Yes

Despite these differences all areas have created pathways for individuals, groups and contexts affected by extra-familial harm, and are developing partnerships/plans to build safety in extra-familial contexts as well as for children and families. These similarities required: Context-Weighting; a broadening of how capacity to safeguard young people is considered and applied; partnerships organised around creating safe spaces, and; frameworks and approaches for assessing contexts as well as individuals.

This remainder of this briefing therefore considers the extent to which these common activities are supported by the legal and policy framework that underpins child protection and safeguarding responses to extra-familial harm.

Legal and policy underpinnings in 2020

The Children Act 1989 is built on key principles which support local efforts to respond to extra-familial harm, notably:

- The welfare of the child is paramount
- Partnership between local authorities and parents/families is crucial
- The presumption of no order – i.e. that courts will only make an order, and by extension local authorities should only leverage a statutory interventions, when this is the only route to protect a child

Building upon these foundations, sections of the Children Act 1989 and 2004, and sections of the statutory safeguarding guidance *Working Together to Safeguard Children* (2018), permit (and somewhat encourage) the common activities detailed in the previous section of this briefing.

Section 17. Children Act 1989 places a general duty on local authorities to:

a) safeguard and promote the welfare of children within their area who are in need; and
b) so far as is consistent with that duty, to promote the upbringing of such children by their families
c) by providing a range and level of services appropriate to those children's needs

A child is defined as need in s.17 (10) if:

a) 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;
b) his health or development is likely to be significantly impaired, or further impaired, without the provision for him of such services; or
c) he is disabled

Case law and statutory guidance (WTSC 2018) establishes that there is a duty to assess the needs of Children in Need and to draw up a plan setting out how the needs of the child will be met. Young people (up to the age of 18) who are affected by extra-familial harm, therefore, *can* be defined as children in need under s.17 of the Children Act 1989 (if the local authority is satisfied that the young person meets the condition of the definition as outlined above) and plans put in place to support them accordingly. In theory these plans could focus on contextual, as well as individual factors – there is nothing in legislation which limits their application to families.

s.47 (1)(b) of the Children Act 1989 states that when local authorities:

have reasonable cause to suspect that a child who lives, or is found, in their area is suffering, or is 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.

Many young people (up to the age of 18) who experience, or are at risk of, extra-familial forms of abuse are suffering or likely to suffer significant harm. As such s.47 enquiries can be made with regards to those young people to inform decision-making regarding 'any action' to be taken to safeguard or promote their welfare. This action can be broad and legislation does not require it to focus on parenting – or the care provided by parents. To this extent interventions into contexts is not a prohibited action and could be aligned to this legislation.

Given the above it is important to make explicit that the Children Act 1989 does not prevent areas from adopting a Contextual Safeguarding approach in response to extra-familial harm. As will be detailed later in this briefing, the interpretation of this legislation into statutory guidance is where further questions arise regarding expectations and regulations regarding responses to harm beyond families: and further to this where resources, practice cultures and associated policies may result in practice limitations.

s.10 of the Children Act 2004 requires local authorities to:

Make arrangements to promote co-operation between —

(a) the authority;
(b) each of the authority's relevant partners; and
(c) such other persons or bodies as the authority consider appropriate, being persons or bodies of any nature who exercise functions or are engaged in activities in relation to children in the authority's area

According to s.10 2(b) these arrangements are to be made with a view to 'improving the well-being of children in the area so far as this is related to protection from harm and neglect'.   In this regard a range of persons or bodies a local authority deems appropriate could be included in plans to respond to, and prevent, 'harm and neglect' – including that which occurs external to families.

s.11 of the Children Act 2004 requires a list of organisations (listed in Appendix A) to:

make arrangements for ensuring that —

(a) their functions are discharged having regard to the need to safeguard and promote the welfare of children; and
(b) any services provided by another person pursuant to arrangements made by the person or body in the discharge of their functions are provided having regard to that need

There is nothing in the legislation that prohibits the application of this section to safeguarding and promote the welfare of children in extra-familial contexts. As such all listed organisations should ensure that they are also able to discharge their functions in a way that has regard to the welfare of young people in peer group, school and public contexts – including building safety in those contexts.

The duty under s11 CA 2004 has been considered in case law, notably in *R(HC) v Work and Pensions Secretary* [2017] UKSC 73 – Lady Hale concluded in relation to s11 that *"…Safeguarding is not enough: their [the children's] welfare has to be actively promoted.".* This has been further reflected in *R(J and L) v Hillingdon [2017] EWHC 3411 (Admin) and R(KS) v Haringey [2018] EWHC 587 (Admin)*. There may be scope to further expand this duty and consider how it applies to organisations with safeguarding responsibilities. Could 'active promotion' of children's welfare include taking active steps to prevent extra-familial harm in a range of contexts?

The Children and Social Work Act 2017 also introduces 'safeguarding partners and child death review partners' to replace local safeguarding children's boards. As part of this, the CA 2004 is amended to include s16E, which requires the safeguarding partners to make arrangements for them and appropriate 'relevant agencies' to 'work together in exercising their functions, so far as the functions are exercised for the purpose of safeguarding and promoting the welfare of children in the area'. The list of relevant agencies is quite long and can be found in the Child Safeguarding Practice Review and Relevant Agency (England) Regulations 2018. This wider involvement of 'relevant agencies' could provide further scope for involving a broader set of partners agencies in contextual safeguarding approaches.

Working Together to Safeguard Children 2018 includes a specific section that considers extra-familial harm (chapter 1, paragraphs 33-34). The section details expectations of how local authorities, and wider partners, should respond to extra-familial harm. These paragraphs assert that:

- extra-familial risks and/or experiences of abuse – including, for example, harm caused by criminal gangs and organised crime groups such as exploitation via county lines, and sexual exploitation – are safeguarding and child protection issues;
- intervention plans for extra-familial harm need to consider, and address, environmental factors associated to the abuse, 'which are likely to be a threat to the safety and welfare of a number of different children who may or may not be known to local authority' (DfE 2018:22); as well as meet the individual needs of identified young people;
- contextual factors that undermine young people's welfare should be assessed for young people who harm others as well as those who are harmed

Further to this section, WTSC, 2018 also features five additional sentences (italics introduced in 2018) which direct practice to consideration of extra-familial contexts:

- specific local early help services will typically include… responses to *emerging thematic concerns in extra-familial contexts* (Chapter 1, paragraph 12);
- information sharing is also essential for when… *multiple children appear associated to the same context or locations of risk* (Chapter 1, paragraph 25);
- social workers, their managers and other practitioners should be mindful of the requirement to understand the level of need and risk in, *or faced by*, a family from the child's perspective and plan accordingly (Chapter 1, paragraph 56);
- (youth offending teams) are therefore well placed to identify children known to relevant organisations and agencies as being most at risk of offending *and the contexts in which they may be vulnerable to abuse* (Chapter 2, paragraph 49);
- organisations and agencies listed under Section 11 of the Children Act 2004 should have arrangements in place for…*creating a culture of safety, equality and protection within the services they provide* (Chapter 2, paragraph 3)

These 2018 amendments to statutory guidance are the elements of *Working Together to Safeguard Children* that most closely align with the practice requirements of a Contextual Safeguarding approach. To an extent the child and family assessment triangle (DfE, 2018:27) provides a framework to consider parental capacity in the context of wider environmental factors. However the guidance that surrounds the framework is largely weighted towards consideration of familial factors that will undermine parental capacity – as opposed to peer, school or community factors undermining the care or control provided by the parent (or the influence of parent's action on the extra-familial safety of their children).

The table below charts how the common practices featured in responses to extra-familial harm are supported – or not – by the legislative and/or policy framework outlined thus far. Using a RAG rating – green (provides foundations); amber (in part provided for or questions remain); red (not provided for) – it illustrates that for the most part the Children Act 1989 and 2004 provide a basis for developing responses to extra-familial harm and the contexts in which such harm occurs.

	Legislative underpinning	Statutory guidance
Escalation pathway for young people at risk of significant harm in extra-familial contexts that is not attributable to care or control provided by parents to ensure a statutory framework in those cases	Section 17 alone doesn't provide an escalatory route but does allow for assessment where harm is not considered 'significant'. Section 47 provides a line of enquiry for assessment Escalation beyond this point is questionable (for example using s.31).	Directs consideration of risks 'faced by' families but does not indicate the pathways for plans that would follow in these circumstances. How to proceed outside of child protection plans?
Context Weighting when assessing the needs of young people affected by EFH and building associated plans	Section 17 and Section 47 provide the legislative underpinning.	Pointed to (risks faced by), but insufficiently considered in the current assessment framework.
Broadening application of capacity to safeguard	Supported to an extent by Section 10 and Section 11 Children Act 2004. Query related to agencies not listed in the legislation (such as high street businesses, parks and recreation, etc.)	Chapter 2 paragraph 3 suggests this – with reference to culture of safety, equality and protection. However remainder of the chapter focused on responsibility to share information about children and families and provide services to them – rather than to groups and contexts. See also chapter 3 para 19/s16G CA 2004: when selected by the safeguarding partners to be part of the local safeguarding arrangements, relevant agencies must act in accordance with the arrangements – some scope for broadening safeguarding capacity with this.
Everybody's responsibility to create safe spaces	Supported to an extent by Section 10 and Section 11 Children Act 2004. Query related to agencies not listed in the legislation (such as high street businesses, parks and recreation, etc.)	Chapter 2 paragraph 3 suggests this – with reference to culture of safety, equality and protection. However remainder of the chapter focused on responsibility to share information about children and families and provide services to them – rather than to groups and contexts. As above: see chapter 3 para 19 and also para 23 re collaboration and cooperation.
Welfare-based assessments of, and plans for, extra-familial context	Unclear as to whether this could be aligned to Section 17 and Section 47 as they may not be focused on a specific child.	Initiated by requirement for plans to address environmental factors (chapter 1, para 33). Without the provision of a framework aligned to legislation consistency is unlikely.
Assessments of and plans for peer groups affected by EFH	Unclear as to whether this could be aligned to Section 17 and	Initiated by requirement for plans to address environmental factors (chapter 1, para 33) and

	Section 47 as they may not be focused on a specific child. Furthermore clarity is required on alignment with GDPR, Children's Rights and Human Rights in regards to proportionality, access to information and consent.	for information sharing about children connected to same context (chapter 1, para 25). However without the provision of an assessment framework and guidance on oversight of plans the guidance does not enable the approach.

However, the statutory guidance that has been built upon that legislative foundation, and which signals minimum practice expectations, falls short in:

a) Guiding how to weight parental capacity against extra-familial contexts and influences
b) Asserting how the legislative framework can be used to assess and coordinate plans that target groups/contexts rather than children and families
c) Organising, and requiring, partners to act to support contexts/groups

Specifically while paragraphs 33-34 of Chapter 1 of WTSC 2018 reference the need for plans to attend to environmental factors the paragraphs that follow move on to consider violent extremism and the core messages of those previous paragraphs are lost. Further to this, pages 31-53 of the document are largely written from the perspective of safeguarding an individual child, who is experiencing harm is in isolation, and where that harm emanates from a family/home. Broadening the scope of these processes to consider groups and contexts would likely impact timescales, practice flowcharts and meeting frameworks – some of which are detailed in the following section.

Legal and policy conundrums that surface in practice

The existing policy and legal framework doesn't prohibit areas from adopting a contextual approach to extra-familial harm. However, as the table above illustrates, there are a number of aspects of the approach where the legal basis is questionable (and requires clarification – hence amber) or where the statutory framework doesn't enable or effectively guide local practice responses (hence red). This section explores those conundrums in more detail.

Questions about the legal framework

As the previous section illustrates, there appears to be a legal basis for most common features of a Contextual approach. There are two exceptions to this:

1. The legal grounds for, and parameters of, peer, or child and friendship, assessments and context assessments (as opposed to child and family assessments)
2. Escalation of cases through a statutory framework where young people are at risk of significant harm for reasons that aren't attributable to the care of control provided by parents/carers (as opposed to cases where it harm is attributable to parenting and therefore escalated via s.31 of the Children Act 1989 and relevant care orders)

On the first matter, present practice related to peer assessment varies hugely around the country in the absence of a clear legal threshold for initiating them. The grounds upon which peer assessment should be followed by plans – and the expected multi-agency contribution to such plans – is all unclear; as is the associations of this practice to GDPR legislation and the UNCRC.

On the second point, when child protection plans don't successfully safeguard the welfare of young people, local authorities may use Section 31 of the Children Act 1989 to initiate care proceedings. In these instances the harm in question must be attributable to the care and control provided by parents. As a result, in cases of extra-familial harm there is no clear escalation route. Often local areas want to increase partnership buy-in to plans where risks are escalating or needs are increasing. They want the plan to be viewed as statutory (under s.47) – and use strategy discussions and sometimes child protection plans – as opposed to voluntary (under s.17) – primarily for increased resourcing to the response. The legal grounds for escalating in this way – and in a way that requires increased partnership resource requires clarification. Can such plans be based on s.47 and, if they are ineffective, what is the next step?

A related matter is the use of out-of-area voluntary placements, care orders or secure placements in cases of significant extra-familial harm that is not attributable to parenting (Ellis, 2018; Firmin, et al., 2020; Shuker, 2013). In addition to using voluntary placements where children are placed in accommodation under s.20 of the Children Act with the consent of parents, local authorities and wider partners, may also support whole families to move to safeguard a young person's welfare. These 'safety moves' do not necessarily have any legal status, and in many cases therefore there will be no information sharing between the authorities involved. The Contextual Safeguarding legal roundtable also surfaced tensions around using Deprivation of Liberty Sections (DOLS) or secure placements under s.25 of the Children Act 1989 to 'contain' a young person who is being abused in extra-familial relationships/contexts. This can feel like a process that punishes a young person for the harm they are experiencing, and further to this only temporarily disrupts risks which a young person will return to once placements end. Participants at the roundtable were keen to explore the legal basis for an alternative process in these cases.

Beyond these exceptions, there are a series of questions that have emerged about the extent to which the apparent legal foundations, detailed in the previous section, work in practice:

1. Is the s.17 general duty sufficient or is a specific duty required in response to cases of extra-familial harm? While s.17 can be used there are series of specific duties in this section of legislation related to children with disabilities, children who are young carers, housing and so on – that can be drawn upon to build plans for children who are in need for matters that go beyond parenting/care. Are there grounds to create a specific duty specifically to respond to extra-familial harm?
2. Are there legal grounds to expand the list of partner agencies required to respond to extra-familial harm under s.11 of the Children Act 2004 or as relevant agencies under s16E Children Act 2004? For example – could private retail or hospitality businesses be required to participate in plans to safeguard the welfare of young people in public places using this legislative footing?
3. Can s.17 and s.47 be used as the foundation for context and peer assessments if they are not focused on a particular individual child? Could you identify a context in need or one in which young people are at risk of significant harm for example – do you have the legislative grounds to do this in order to safeguard the welfare of young people?

At the point of writing this briefing these questions are unanswered – and were noted as matters to explore following the 2020 Contextual Safeguarding legal roundtable.

Challenges with the policy framework

Compared to the legal foundations, the policy framework for safeguarding young people requires far greater development to support a Contextual Safeguarding response to extra-

familial harm. There are three thematic areas where *Working Together to Safeguard Children* initiates/prompts a Contextual Safeguarding approach but is yet to provide a roadmap to connect the legal foundations (outlined above) with a practice approach. These three areas relate to:

1. The statutory pathway, and plans, for young people at risk of significant extra-familial harm that are not attributable to the care/control provided by their parents/carers
2. The assessment (including mapping) of peer relationships and any required intervention/support plans
3. The assessment of context/locations where young people are at risk of significant harm and any required intervention support/plans

Assessments of, and plans for, young people at risk of, or experiencing, significant harm in extra-familial contexts

Statutory guidance states that assessments need to consider risks faced by, as well as in, families. To support local areas to practice in this way, statutory safeguarding guidance needs to explain:

a) How to develop a plan, under s.17 of the Children Act 1989, that attends to extra-familial contexts/dynamics of harm. What might such a plan look like? Who might be involved? What is a reasonable expectation of partner input on such plans?
b) How to manage the issue of consent – for both young people and parents/carers – in cases of extra-familial harm. If parents' consent but young people do not – or vice versa – what are the options at s.17? How effective can a plan be without such engagement; and while time is being taken to build engagement while young people remain at risk of harm, what is the appropriate legal status for these cases?
c) What more is required from partner organisations in cases of escalation – and what is the legal basis for this?
d) How to weight the influence of extra-familial and familial factors identified during assessments and the potential outcomes/pathways in different scenarios including whether to use Child in Need, Child Protection or an alternative pathway/plan for young people at risk of significant extra-familial harm (and the legal basis for such a plan).
e) The role(s) of partner organisations beyond sharing information about, and providing services to, children and families. Might they be required to provide services into a location/group or other context in order to safeguard the welfare of a young person?
f) How can cases be overseen when they overlap the remits of Community Safety, Youth Justice, and Child in Need or Child Protection. If there are extra-familial safeguarding issues that are associated to young people's behaviours – and these behaviours are of concern to youth justice or community safety colleagues, what is the process for coordinating a plan? How can safeguarding issues – which might outlive a youth justice order or community safety sanction be managed; and what are the partnership requirements when community safety sanctions risk undermining safeguarding actions?

Assessments of, and plans for, young people's peer relationships and friendships

Statutory guidance states that information sharing is required when young people are connected to the same thematic or contextual concern. To support local areas to practice in this way, statutory safeguarding guidance needs to explain:

a) What an assessment framework for peer relationships might include – as this is likely to differ to the child and family assessment framework currently included in guidance
b) The legal basis upon which peer assessments are conducted and information about peers is shared (with who and when) to both develop the assessment and act on it.

For example working alongside, and informing, young people and their parents about information is recorded and shared on peer assessments; and agreeing the level of information share with partner agencies, and what actions they can/can't take in response (such as schools and the police).

c) The key information sharing considerations when conducting peer assessments to ensure children's rights (in accordance with UNCRC) are protected alongside efforts to safeguard their welfare

d) What expectations there are, if any, for 'holding' cases related to a group rather than an individual; including in cases where a group is made up of children who individually have various plans, or none at all, with children's services. What might a group plan look like – when would it close or 'step down' from children's social care assessment framework for young people's peer groups and friendships

e) How might peer assessments be managed for groups that straddle different local authorities?

Assessments of, and plans for, locations/contexts in which young people are at risk of significant harm

Statutory guidance states that in cases of extra-familial harm 'interventions should focus on addressing these wider environmental factors, which are likely to be a threat to the safety and welfare of a number of different children who may or may not be known to local authority children's social care' (DfE, 2018: 22). To support local areas to practice in this way, statutory safeguarding guidance needs to explain:

a) What a welfare-based (rather than community safety) assessment framework for a location might include – as this is likely to differ to the child and family assessment framework currently included in guidance

b) The expectation on partner agencies to contribute to such assessments – and any plans that follow; including making reference to this in chapter 2 of the guidance where partner responsibilities are detailed, and clarifying how this is supported by s.10 and s.11 of the Children Act 2004

At this stage therefore it is clear that, at a minimum, the opportunities to use the existing legislative framework in cases of extra-familial harm requires clarification – and the ways to use this framework in practice need to be detailed in statutory guidance. Beyond this, questions remain about the legal grounds for assessments of contexts and relationships that go beyond families, and the relationship between youth justice, community safety and child protection responses to young people affected by extra-familial harm. How these matters are attended to will also inform, and be informed by, any attempt to better record children's social care referrals, assessments and plans that relate to cases of harm that are extra-familial. Local variance in the use of plans (and their legal basis) and assessment frameworks means that at present there is no standardised way to record the numbers of assessments completed or plans created to address risks of extra-familial harm.

Recommendations

At this stage we recommend that:

1. The Department for Education collaborate with ADCS and other local area representatives to develop proposals for statutory guidance (underpinned by existing primary legislation) for responses to extra-familial harm and clarifies the legal basis for such work. This builds upon the recommendations made by the Child Safeguarding Practice Review Panel in relation to the reporting and recording of cases of criminal exploitation in local authorities.

2. The Department for Education clarify the legal grounds for peer assessment, and the related considerations in terms of GDPR and the UNCRC, to support the ethical and legal use of this technique as part of a response to extra-familial harm.

3. Community safety partnerships and wider organisations who deliver services, or respond to harm, in extra-familial settings are consulted on their role(s) to build safety in locations/contexts where young people are at risk of significant harm – as part of work to review the role of multi-agency safeguarding partnerships in responding to criminal exploitation following recommendations by the Child Safeguarding Practice Review Panel.

4. The Department for Education, the Home Office and the Ministry of Justice, along with the Youth Justice Board, work with local areas to understand and resolve the tensions of cases of extra-familial harm that span child protection, community safety and youth offending services.

5. Young people, parents and communities are consulted on any significant revisions to how local areas organise their responses to extra-familial harm; particularly to explore issues of consent, information sharing in regards to groups/locations, and involving parents and young people in meetings focused on groups/contexts rather than children and families.

Next Steps

The Contextual Safeguarding Programme will pursue these recommendations via its UK Advisory Group on Contextual Safeguarding and with stakeholders who attended the 2020 legal roundtable. Should further legal or policy queries emerge via the programme's governance arrangements or research projects – particularly in test sites – these will be fed into those structures and any efforts to improve the relevance of statutory guidance for local responses to extra-familial harm.

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Appendix A – Example of Organisations Listed Under s.10 of the Children Act 2004

- Local authorities and district councils that provide children's and other types of services, including children's and adult social care services, public health, housing, sport, culture and leisure services, licensing authorities and youth services;
- NHS organisations, including the NHS Commissioning Board and clinical commissioning groups, NHS Trusts and NHS Foundation Trusts;
- The police, including police and crime commissioners and the chief officer of each police force in England and the Mayor's Office for Policing and Crime in London;
- The British Transport Police;
- National Probation Service and Community Rehabilitation Company(formerly the Probation Service);
- Governors/Directors of Prisons and Young Offender Institutions;
- Early years and child care;
- Faith organisations;
- Education providers including: a person providing services [in pursuance of section 68 of the Education and Skills Act 2008] in any part of the area of the authority; the governing body of a maintained school that is maintained by the authority; the proprietor of a school approved by the Secretary of State under section 342 of the Education Act 1996 and situated in the authority's area; the proprietor of a city technology college, city college for the technology of the arts or Academy situated in the authority's area; the governing body of an institution within the further education sector the main site of which is situated in the authority's area;
- Directors of Secure Training Centres; and Youth Offending Teams/Services;
- Private sector and voluntary organisations who are commissioned or contracted to provide services on behalf of the bodies listed above

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