

Appendix 1 - Questions from members of the public

Question Number	Questioner	Question	Question to
PQ 1	Ms Liddle, Ledbury	<p>In Herefordshire Council's guidance for schools on peer on peer sexual abuse, there is NO information at all as to HOW the Human Rights Act applies. Specifically, there is no mention of Article 3 or any explanation of the substantive and procedural obligations on schools under Article 3. The public has set out its concerns that this lack of guidance is resulting in victims, mainly girls, being denied their Article 3 and Article 8 rights and suffering avoidable harm.</p> <p>The CEO recently confirmed that Herefordshire Council does not intend to fill this gap in its guidance, which the public has claimed leaves girls at risk of unlawful discrimination.</p> <p>Before making this decision not to issue further guidance to schools, did Herefordshire Council undertake an Equality Impact Assessment?</p>	Cabinet member children and families
<p>Response: All guidance to schools with regard to peer on peer abuse will take into account the relevant articles under the Human Rights Act and Equality legislation. Guidance is continually reviewed and follows advice and guidance on this subject from the DfE. Equality Impact Assessments are carried out when new policy or practice is developed or amended. The guidance given is not such a document. The guidance is based on the Law and guidance issued by the DfE. However, we do take account of all legislation when drafting guidance for schools.</p>			
<p>Supplementary question: Was an Equality Impact Assessment undertaken when guidance on peer on peer sexual abuse was developed and can we see it?</p>			
<p>Response to supplementary question (cabinet member children and families): A written response would be provided.</p> <p><i>Written response – provided 11 August 2022:</i></p> <p><i>A quality Impact Assessment was not carried out on the guidance given. This is not required as it is not a policy document. It is guidance given from the DfE and based on the Law. You may wish to ask the DfE if they carried out an Equality Impact Assessment when they produced their guidance.</i></p>			
PQ 2	Dr McLean, Leominster	There is widespread concern among the public that the Director of Children's Services and his team do not understand the substantive and procedural obligations imposed by Article 3 of the Human Rights Act on state Schools, and that as a result the advice being offered from the Council's MASH team is deficient and failing to protect victims of sexual assault, who are mainly female.	Cabinet member children and families

		Can the Cabinet Member please ask the Director of Children's Services to put the public's mind at rest and set out in writing, in response to this question, what he understands the procedural obligations to be on schools dealing with a credible allegation of peer on peer sexual violence, in a case where the victim has reported the case to the police but does not want to pursue the case through the criminal justice system?	
--	--	---	--

Response:

Thank you for your question. I can confirm that the Director of Children's Services and the MASH team do understand the importance of following and considering the law when advising on such a sensitive and serious subject. The guidance given to schools does take account of all relevant legislation and articles under the Human Rights Act. It is for schools to consider and use this guidance at a practical level when faced with such cases. Every case will depend on its own set of facts. If a matter is not pursued through the criminal process then the guidance is available to assist schools in such cases. Schools as has been said previously can seek further support or advice should they so wish. If it is felt that a school was in breach of the Human Rights Act then any legal action or challenge would need to be made against the school as the decision taker. Furthermore we do offer advice and training to schools emphasising what we would expect them to do in cases where the Police have been informed but the victim does not wish to pursue any action.

Supplementary question:

A claim is made in answer to my question as follows:

" If a matter is not pursued through the criminal process then the guidance is available to assist schools in such cases"

The answer does not specify what guidance and I know that there is ZERO written guidance for schools from the Council or indeed from the Department of Education about the decision making process when a criminal case is closed, which in law MUST include a proper investigation in accordance with the procedural obligations under Article 3. The public has repeatedly asked the Director of Children's Services to demonstrate that he and his team understand and can explain to schools the substantive and procedural obligations under Article 3, which are not case specific. The Director and his team appear unable to do this, despite being asked by Members of the Public on more than one occasion. We are being asked to believe that the Children's Service is capable of offering training to schools on these matters, and we are asked to accept that when schools come to the Council for advice, that the advice takes full account of Article 3.

There is a massive credibility gap developing here. If the Director and his team are capable of advising and training schools on these matters, why will they not set out the procedural obligations under Article 3 when schools are investigating a credible allegation of sexual violence?

Response to supplementary question (cabinet member children and families):

Article 3 is particularly relevant to peer on peer sexual abuse in schools and there is a lack of detailed guidance around the article at national level, from the department for education (DfE), as all cases are very different. We can be more explicit in our written guidance and training for schools. A written response would be provided.

Written response – provided 11 August 2022:

Your comments with regard to a proper investigation I believe relate to the procedural obligations in a criminal investigation, not those of an educational establishment. The police would carry out an investigation, if the case is then closed without any prosecution, it is the role of the school to make sure that the victim is safe from the alleged perpetrator. It is not the role of the school to continue or carry out their own investigation. The child on child guidance and multi agency guidance is available to settings. Both of which include how schools will deal with cases internally. When a criminal case is closed considerations and safety plans (which will already be in place) will be reviewed with the victim and their family. To reiterate that all cases are dealt with on a case by case basis due to the complexities of each individual

situation. The articles in particular article 3 that your question refers will underpin such actions and is referred to in the updated guidance for schools.

Please see link below for information for Herefordshire Safeguarding Boards peer on peer abuse multi-agency guidance

- [Herefordshire Peer on Peer Abuse guidance for multi-agency professionalsFinal v1 21012022.docx \(live.com\)](#)

PQ 3	Ms Attfield, Bromyard	Since August last year, Herefordshire Council has commissioned three pieces of advice from a QC in order to better understand the legal framework operating when schools are dealing with cases of peer on peer sexual violence. The advice has cost over £6,000 and would have been an excellent investment had the advice received by the Council been passed on to Herefordshire schools. However, since receiving the advice the Council has not updated the guidance for schools to include information received from the QC about the application of Article 8 of the Human Rights Act, and detailed information about the legal basis for excluding those against whom credible allegations have been made. What is the Council's rationale for not sharing this helpful and clear advice from the QC with schools?	Cabinet member children and families
------	--------------------------	--	--------------------------------------

Response:

Thank you for your question and your helpful challenge. The guidance given to schools with regard to peer on peer abuse is reviewed and will always be amended should the law or government guidance change. We are satisfied that schools have all the most up to date guidance available on this sensitive subject and that covers the relevant Articles under the Human Rights Act and any Equalities legislation. Having said this we accept that there is always room to improve and we shall be considering the article mentioned in your question and others again to make sure that schools do understand their significance when applying the guidance to a particular set of facts. It is important to highlight that the Council provides training to schools on safeguarding which covers peer on peer abuse. Schools can seek advice at any time from this Council or indeed any other body should they need this in relation to any case that they may be faced with. We will take account of the advice from the QC.

Supplementary question:

You've said in your reply that you're satisfied that schools have all the most up to date guidance available. However, the Council received clear QC opinion on the relevant HRA Articles, and this is not reflected in the guidance so by definition it cannot be up to date. A school would not be able to understand the significance when applying the guidance, without the inclusion of these important issues. It is difficult to comprehend the Council's resistance to commissioning an update of its guidance to schools, given that it has already obtained the QC's opinion. When will the Council be considering the Articles mentioned in my (and others) questions to make sure that schools do understand their significance when applying the guidance to a particular set of facts, as this response lacks a clear time frame and risks not being completed?

Response to supplementary question (cabinet member children and families):

The up to date guidance is true as these are schools' responsibilities and the guidance is the national DfE guidance to schools which is being changed all the time. Schools all have the most up to date guidance. Work was being undertaken to ensure the guidance was more explicit regarding the relevant HRA articles. A written response would be provided.

Written response – provided 11 August 2022:

The guidance provided by Herefordshire Council is up to date as it references current statutory guidance and law, which includes HRA. The guidance is designed specifically to support schools in managing peer on peer abuse Article 3,8,14,Protocol 1- Article 2 have been added to the September 2022 Child on Child abuse guidance in order to ensure schools understand their significance when dealing with such cases.

PQ 4	Anonymous, Name and address supplied	<p>In the Leader’s recent newsletter, the Cabinet Member for Children wrote this in the section on peer-on-peer abuse:</p> <p>“We also offer a fully independent and confidential mediation service for any families or victims of abuse.”</p> <p>In September 2020, families who had been campaigning about safeguarding failures in connection with peer on peer sexual abuse were promised a “reconciliation” service. This has never materialised.</p> <p>It appears that the promised “reconciliation” service has now been replaced by a “mediation” service, without consultation with the families affected despite the recommendation from CYP Scrutiny on 1 June 2021, resolution 9b, which stated, “That consultation take place with families ahead of the signature of the contract for the mediation service”. If the mediation service now exists, why have the affected families not been informed or given access to the service?</p>	Cabinet member children and families
------	--------------------------------------	---	--------------------------------------

Response:
 Thank you for your question. The service referenced here is the same service – it is not true to say it has never materialised. The reconciliation service exists and is available. The contact details are available permanently on the council website under the heading ‘Protect Someone’ following a period of on line consultation. However the service that has been commissioned, fully independent from the council, calls itself a mediation service but offers a range of support and advice. The name was changed to avoid confusion but the offer has not changed in any substantive way. It is fully confidential and sits outside the council as agreed previously. It has been widely publicised. The exact details on the council website are :

If your family has been affected by peer on peer abuse, there is local support available. Children First Family Mediation is an independent family mediation service who offer confidential, sensitive support to Herefordshire families and individuals who have been affected by peer on peer abuse. To access the service please contact Sheena Adam by email confidential@childrenfirstfamilymediation.org.uk or call 01617 638793 and quote “Herefordshire”.

Supplementary question:
 The answer provides a link to a mediation service set up to fulfil a promise of a process of reconciliation for families affect by the council’s failures on peer on peer sexual abuse. The email address did not work, a phone call to the number provided was answered by an individual who explained the service was to help families with their finances and help was not available for peer on peer abuse. There is no mediation service for peer on peer abuse. A family who had contacted the care concerns email address over a year ago had not had an acknowledgement and there are a number of families in this position. The council has harmed children and families by failing to deal honestly and openly with concerns. When process of

reconciliation first proposed families explained that fundamental to the process was the truth but the answer provided by the cabinet member shows a dis-connect between what members are being told and what exists in reality. All members should ask for evidence-based responses on all matters relating to children's services.

Response to supplementary question (cabinet member children and families):

Responding to concerns is very important and is a priority. I will be looking into this immediately.

PQ 5	Ms Shore, Bartestree	<p>In the first approved written answer to a public question to Cabinet, the Cabinet Member for Children claimed that the Council's position on peer on peer abuse is not discriminatory. In that answer, the justification given quoted Section 26 of the Human Rights Act. There is no S26 of the Human Rights Act. It simply does not exist.</p> <p>The concern has been raised repeatedly by the public that the Council's current policy and practice on peer on peer sexual violence is likely to lead to sex discrimination. The Council has rejected this position by quoting legislation which does not exist. Can the public now have a proper, detailed legal analysis of why the Council thinks that the failure to ensure that Article 3 rights are respected in EVERY case of peer on peer sexual violence will not lead to discrimination?</p>	Cabinet member children and families
------	-------------------------	---	--------------------------------------

Response:

Thank you for your question. The sentence you refer to in the supplementary response to the question at Cabinet in May as I understand you have now been advised was incorrect and should have been removed. My apologies for that. The guidance as I have already said does take into account all relevant articles under the Human Rights Act and all other relevant legislation. I can only repeat guidance given to schools on this subject is kept under constant review and would follow all guidance and advice provided by the DfE.

Supplementary question:

It is astonishing that a response to a question about peer on peer abuse refers to a piece of the human rights act (HRA) which does not exist. The answer contained the wording: *s26 of the HRA 1998 sets out that schools and colleges should be aware of their obligations under the HRA*. The statement is meaningless as the article does not exist and exposes the fact that the officers do not understand the HRA sufficiently to be able to advise or train schools on the HRA. Currently there is no guidance for schools on the regard they must have for article 3, 8 and 18 of the HRA. Will the council commit to ensuring that the procedural obligations determining the rights of a victim of sexual violence under article 3 and 8 of the HRA are clearly explained in writing to schools so there is no risk of discrimination to girls?

Response to supplementary question (cabinet member children and families):

I agree there is the risk of discrimination against girls and that is clearly set out in the HRA. In terms of understanding the law, it is important that the safeguarding officers do understand. In terms of interpreting the law, there are certain elements we can set out in advance in guidance but there are other elements open to interpretation which would become very long winded in guidance and are better undertaken in a training forum. A written response would be provided.

Written response – provided 11 August 2022:

All guidance produced by both Herefordshire Council and DfE make reference to and consider the HRA. Article 3,8,14,Protocol 1- Article 2 have been added to the September 2022 Child on Child abuse guidance in order to ensure schools understand their significance when

dealing with such cases. Further provisions within the Equality Act allow education settings to take positive action, where it can be shown that it is proportionate, to deal with particular disadvantages affecting one group. A school or college, could, for example, consider taking positive actions to support girls if there was evidence they were being disproportionately subjected to sexual violence or sexual harassment.